

## SUBCHAPTER I—OTHER REGULATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

### PART 280—GENERAL PROVISIONS APPLICABLE TO SUBCHAPTER I

AUTHORITY: Natural Gas Policy Act of 1978, Pub. L. 95-621; 92 Stat. 3350, 15 U.S.C. 3301-3432; Outer Continental Shelf Lands Act Amendment of 1978, Pub. L. 95-372, 43 U.S.C. 1862.

#### § 280.101 Definitions.

(a) *NGPA definitions.* Terms defined in the NGPA shall have the same meaning for purposes of this subchapter as they have under the NGPA, unless further defined in this subpart.

(b) *Other definitions.* For purposes of this subchapter:

(1) *NGPA* means the Natural Gas Policy Act of 1978.

(2) *OCS* means the Outer Continental Shelf as defined in section 2(35) of the NGPA.

[44 FR 12409, Mar. 7, 1979, as amended by Order 92, 45 FR 49252, July 24, 1980]

### PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978

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AUTHORITY: 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 2601-2645; 42 U.S.C. 7101-7352.

SOURCE: Order 10-B, 44 FR 13470, Mar. 12, 1979, unless otherwise noted.

#### Subpart A [Reserved]

#### Subpart B—Permanent Curtailment Rule

#### § 281.201 Purpose.

The purpose of this subpart is to implement section 401 of the NGPA in order to provide that effective November 1, 1979, the curtailment plans of interstate pipelines protect, to the maximum extent practicable, deliveries of natural gas for essential agricultural uses and for high-priority uses in accordance with the provisions of this subpart.

[44 FR 26862, May 8, 1979]

#### § 281.202 Applicability.

This subpart applies to the following interstate pipe lines:

Alabama-Tennessee Pipeline Company.  
Algonquin Gas Transmission Company.  
Arkansas Louisiana Natural Gas Company.  
Cities Service Gas Company.  
Colorado Interstate Gas Company.  
Columbia Gas Transmission Corporation.  
Consolidated Gas Supply Corporation.  
East Tennessee Natural Gas Company.  
Eastern Shore Natural Gas Company.  
El Paso Natural Gas Company.  
Florida Gas Transmission Company.  
Great Lakes Gas Transmission Company.  
Inter-City Minnesota Pipelines, Ltd., Inc.  
Kansas-Nebraska Natural Gas Company, Inc.  
Lawrenceburg Gas Transmission Company.  
Michigan-Wisconsin Pipeline Company.  
Mid-Louisiana Gas Company.  
Midwestern Gas Transmission Company.  
Mississippi River Transmission Company.  
Montana Dakota Utilities Company.  
National Fuel Gas Supply Company.  
North Penn Gas Company.

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Northern Natural Gas Company.  
Northwest Pipeline Corporation.  
Panhandle Eastern Pipeline Company.  
South Georgia Natural Gas Company.  
Southern Natural Gas Company.  
Southwest Gas Corporation.  
Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.  
Tennessee Natural Gas Lines.  
Texas Eastern Transmission Corporation.  
Texas Gas Transmission Corporation.  
The Inland Gas Company.  
Transwestern Pipeline Company.  
Trunkline Gas Company.  
United Gas Pipe Line Company.  
Western Gas Interstate Company.

[44 FR 26862, May 8, 1979, as amended at 44 FR 48184, Aug. 17, 1979]

### § 281.203 Definitions and cross references.

(a) *Definitions.* For purposes of this subpart:

(1) *Direct sale customer* means an essential agricultural user of high priority use which purchases natural gas directly from an interstate pipeline and consumes such natural gas for a high-priority use or an essential agricultural use.

(2) *Essential agricultural use* means any use of natural gas which is certified by the Secretary of Agriculture as an “essential agricultural use” under section 401(c) of the NGPA, as identified in 7 CFR part 2900, *et seq.*

(3) *Essential agricultural user* means a person who uses natural gas for an essential agricultural use.

(4) *High-priority use* means any use of natural gas which qualifies the user as a high-priority user.

(5) *High-priority user* means any person who uses natural gas:

- (i) In a residence;
- (ii) In a small commercial establishment;
- (iii) In a school or a hospital; or
- (iv) For police protection, for fire protection, in a sanitation facility or a correctional facility.

(6) *End-use curtailment plan* means a provision in the tariff of an interstate pipeline that requires that under circumstances of supply shortage natural gas deliveries will be curtailed based at least in part upon factors which consider the end-use of the natural gas.

(7) *Indirect sale customer* of an interstate pipeline means an essential agricultural end-user served by a local dis-

tribution company which is served directly by the interstate pipeline.

(8) *Residence* means a dwelling using natural gas predominantly for residential purposes such as space heating, air conditioning, hot water heating, cooking, clothes drying, and other residential uses and includes apartment buildings and other multi-unit buildings.

(9) *Small commercial establishment* means any establishment (including institutions and local, state and Federal Government agencies) engaged primarily in the sale of goods or services where natural gas is used:

(i) In amounts of less than 50 Mcf on a peak day; and

(ii) For purposes other than those involving manufacturing or electric power generation.

(10) *Hospital* means a facility, the primary function of which is delivering medical care to patients who remain at the facility including nursing and convalescent homes. Outpatient clinics or doctors’ offices are not included in this definition.

(11) *School* means a facility, the primary function of which is to deliver instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and noneducational activities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(12) *Local distribution company* means a local distribution company served directly by an interstate pipeline.

(13) *Rolling base period* means a time period in which entitlements of the customers of an interstate pipeline are established pursuant to the pipeline’s currently effective curtailment plan and which is periodically updated to reflect recent gas requirements of such customers.

(14) *Entitlements* of a direct sale customer or a local distribution company customer with respect to a particular interstate pipeline means the amount of natural gas that customer is permitted to receive under the interstate pipeline’s currently effective curtailment plan.

(15) *Interstate pipeline purchaser* means an interstate pipeline which received deliveries of natural gas from another interstate pipeline.

(16) *Alternative fuel* means alternative fuel as it is defined in Subpart C of this part.

(b) *Cross references.* (1) Essential agricultural requirements are calculated in accordance with § 281.208.

(2) *Index of entitlements* is that index of entitlements prepared in accordance in § 281.204(b).

[44 FR 26862, May 8, 1979, as amended by Order 29-C, 44 FR 61344, Oct. 25, 1979; Order 55-B, 45 FR 54739, July 18, 1980]

#### § 281.204 Tariff filing requirements.

(a) *General rule.* Each interstate pipeline listed in § 281.202 shall file tariff sheets, including an index of entitlements, which provides that if the interstate pipeline is in curtailment, natural gas will be delivered in accordance with the provisions of this subpart. If the interstate pipeline has curtailment provisions in its currently effective tariff, the tariff sheets shall amend the existing curtailment provisions. If the interstate pipeline has no curtailment plan in its currently effective tariff, when it files tariff sheets to amend its currently effective tariff to include a curtailment plan such curtailment plan shall comply with the requirements of this subpart. The tariff sheets shall be filed no later than October 1, 1979, with a proposed effective date of November 1, 1979. The Data Verification Committee report prepared in accordance with § 281.213 shall be filed with the tariff sheets.

(b) *Index of entitlements.* (1) The index of entitlements for an interstate pipeline shall identify the natural gas entitlements in priority of service categories 1 and 2 (established in accordance with § 281.205(a)) for each direct sale customer, each local distribution company customer and each interstate pipeline purchaser on a daily, monthly, seasonal or other periodic basis used in the currently effective curtailment plan.

(2) *Periodic update.* Each interstate pipeline shall update its index of entitlements annually to reflect changes in Priority 2 entitlements. The new index of requirements shall be filed on September 15 of each year with a proposed effective date of November 1, except that if the interstate pipeline uses a rolling base period in its currently ef-

fective curtailment plan it shall file its new index of entitlements on the date upon which other end-uses of the customers of the interstate pipeline are updated in accordance with the currently effective tariff.

(3) *Alternative fuel determination.* The index of entitlements shall not include the volumes of natural gas for which volumes the essential agricultural user has the ability to use an alternative fuel, as determined under Subpart C of this part. Each interstate pipeline shall amend its index of entitlements pursuant to paragraph (b)(2) of this section to remove from the priority 2 entitlements and place in an appropriate priority of service category any such volumes or natural gas included in any index of entitlements that is effective on or after October 31, 1979.

(c) *Other tariff provisions.* (1) Every tariff filed under this subpart shall contain provisions that will require the interstate pipeline:

(i) To provide for deliveries of sufficient volumes of natural gas to respond to emergency situations (including environmental emergencies) during periods of curtailment where additional supplies are required to forestall irreparable injury to life or to property; and

(ii) To provide for deliveries of sufficient volumes of natural gas to provide for minimum plant protection when the plant is shut down.

(2) *Volumetric delivery requirements.* Notwithstanding any other provisions of this subpart, an interstate pipeline which is delivering natural gas in accordance with this subpart shall not be required to deliver to any customer volumes of natural gas on a daily, monthly, seasonal or other periodic basis which exceed the volumes of natural gas that the interstate pipeline may deliver to such customer without causing the interstate pipeline to violate any daily, monthly, seasonal or other periodic volumetric limitations

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established in the contract between the interstate pipeline and such customer.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

[44 FR 26862, May 8, 1979, as amended at 44 FR 45923, Aug. 6, 1979; 44 FR 62490, Oct. 31, 1979; Order 55-B, 45 FR 54739, July 18, 1980; Order 145, 46 FR 27913, May 22, 1981]

### § 281.205 General rules.

(a) *Priority of service categories*—(1) *Priority 1.* Each interstate pipeline shall establish a new high-priority use category of service designated priority one (1) which shall include all the high-priority entitlements calculated in accordance with § 281.206 and those storage injection volumes calculated in accordance with paragraph (c)(2) of this section.

(2) *Priority 2.* Each interstate pipeline shall establish a new priority of service category designated priority two (2) which shall include all the essential agricultural use requirements calculated in accordance with § 281.207 and those storage injection volumes calculated in accordance with paragraph (c)(2) of this section.

(3) *Other priority of service categories.* Each interstate pipeline may retain the priority of service categories in its currently effective tariff, but such categories shall be placed at priorities below the new priorities 1 and 2. Each interstate pipeline shall reduce the entitlements in all other existing categories of service to the extent such entitlements have been placed into the new priority of service categories 1 or 2.

(b) *Method of curtailment.* All deliveries to all customers of the interstate pipeline for all volumes of natural gas not included in priorities 1 and 2 shall be fully curtailed by the interstate pipeline before priorities 1 and 2 entitlements are curtailed. Deliveries for priority 2 entitlements shall be fully curtailed by the interstate pipelines (in accordance with the currently effective curtailment plan) before priority 1 entitlements are curtailed by the interstate pipelines. Nothing in this paragraph is intended to alter the operation of any “small customer” or “small dis-

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tributor” exemption or waiver (as defined in an interstate pipeline’s currently effective curtailment plan).

(c) *Storage*—(1) *General rule.* Interstate pipelines shall classify customer storage injection volumes in the same manner as that used in the currently effective curtailment plan.

(2) *Storage sprinkling.* Interstate pipelines which classify customer storage injection volumes on the basis of the actual end-use of the natural gas shall recalculate storage injection volumes placed in each priority of service category based upon the index of entitlements to be filed on September 15.

(3) *Other treatment of storage.* Except as provided in paragraph (c)(2) of this section, no interstate pipeline shall recalculate or reclassify any customer storage injection volumes, and no customer storage injection volumes shall be included as priority 1 or 2 entitlements.

[44 FR 26862, May 8, 1979, as amended by Order 29-C, 44 FR 61344, Oct. 25, 1979; Order 145, 46 FR 27913, May 22, 1981]

### § 281.206 Priority 1 reclassification.

(a) *Definitions.* For purposes of this section “high-priority entitlements” means, with respect to a particular interstate pipeline.

(1) In the case of a direct sale customer, the volume of natural gas such direct sale customer is entitled to receive for high-priority uses (as defined in § 281.203) under the currently effective curtailment plan of the interstate pipeline;

(2) In the case of a local distribution company, the volume of natural gas which such local distribution company is entitled to receive on account of the high-priority uses (as defined in § 281.203) of its high-priority user customers under the currently effective curtailment plan of the interstate pipeline;

(3) In the case of an interstate pipeline purchaser the volume of natural gas such interstate pipeline purchaser is entitled to receive from an interstate pipeline supplier for the high-priority entitlements of its direct sale customers, local distribution company customers and interstate pipeline customers.

(b) *Direct sale customer and local distribution company customers.* (1)(i) Subject to paragraph (b)(2) of this section, and §281.211 each direct sale customer may request each of its direct interstate pipeline suppliers to reclassify its high-priority entitlements in its currently effective curtailment plan as priority 1 entitlements.

(ii) Subject to paragraph (b)(2) of this section, and §281.211 each local distribution company must request each of its direct interstate pipeline suppliers to reclassify its high priority entitlements in its currently effective curtailment plan as priority 1 entitlements.

(2) The direct sale customer or local distribution company customer shall designate the entitlements in each priority of service category in the currently effective curtailment plan for which priority 1 reclassification is requested. It shall request that those entitlements for which priority 1 reclassification is requested be excluded from the category of service in which they are included in the currently effective plan.

(3) Subject to §281.210, the interstate pipeline shall reclassify all such high-priority entitlements as priority 1 entitlements and shall reduce by an equal amount the entitlements in such other priority of service categories as designated by the direct sale customer or local distribution company customer, (in accordance with paragraph (b)(2) of this section).

(c) *Interstate pipeline.* (1) Subject to paragraph (b)(2) of this section, and §281.211 an interstate pipeline purchaser may request each of its direct interstate pipeline suppliers to reclassify its high-priority entitlements in its currently effective curtailment plan (equal to the attributed priority 1 entitlements calculated in accordance with §281.209) as priority 1 entitlements in the currently effective curtailment plan of the interstate pipeline supplier.

(2) The interstate pipeline purchaser shall designate the entitlements in each priority of service category in the currently effective curtailment plan for which priority 1 reclassification is requested. It shall request that those entitlements for which priority 1 classification is requested be excluded from

the category of service in which they are included in the currently effective plan.

(3) Subject to §281.210, the interstate pipeline supplier shall reclassify all such high-priority entitlements as priority 1 entitlements and shall reduce the high-priority entitlements in other priority of service categories as designated by the interstate pipeline customer, (in accordance with paragraph (c)(2) of this section).

[44 FR 26862, May 8, 1979]

#### § 281.207 Priority 2 classification.

(a) *Direct sale customer.* (1) Subject to paragraph (a)(2) of this section, and §281.211 a direct sale customer may request each of its direct interstate pipeline suppliers to classify its essential agricultural requirements (calculated in accordance with §281.208) as priority 2 entitlements.

(2) The essential agricultural user shall designate the entitlements in each priority of service category in the currently effective curtailment plan which reflect the essential agricultural requirements. It shall request that entitlements which are reflected in priority of service categories in the currently effective curtailment plan are removed from such priority of service categories.

(3) Subject to §281.210, the interstate pipeline shall classify all such essential agricultural requirements as priority 2 entitlements and reduce the entitlements in such other priority of service categories as designated by the direct sale customer, (in accordance with paragraph (b)(2) of this section).

(b) *Indirect sale customer.* Subject to §281.211 an indirect sale customer which is an essential agricultural user may ask each of its local distribution company direct suppliers to request each interstate pipeline supplier to classify the indirect essential agricultural requirements as priority 2 entitlements.

(c) *Local distribution companies.* (1) The local distribution company shall attribute (in accordance with §281.209) the indirect essential agricultural requirements for which reclassification is sought under paragraph (b) of this section to its direct interstate pipeline suppliers. Subject to paragraph (b)(2) of

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this section, and §281.211 the local distribution company shall request each of its direct interstate pipeline suppliers to classify the attributed indirect essential agricultural requirements as priority 2 entitlements.

(2) The local distribution company shall designate the entitlements in each priority of service in the currently effective curtailment plan which reflect the attributed indirect essential agricultural requirements. It shall request that those entitlements which are reflected in each category in the currently effective curtailment plan are removed from such priority of service category.

(3) Subject to §281.210, the interstate pipeline shall classify all such attributed indirect essential agricultural requirements as priority 2 entitlements and shall reduce the entitlements of the local distribution company in such other priority of service categories as designated by the local distribution company, (in accordance with paragraph (b)(2) of this section).

(d) *Interstate pipeline.* (1) Subject to paragraph (d)(2) of this section, and §281.211 an interstate pipeline purchaser may request each of its direct interstate pipeline suppliers to classify the attributed priority 2 entitlements (calculated under §281.209) as priority 2 entitlements in the currently effective curtailment plan of the interstate pipeline supplier.

(2) The interstate pipeline purchaser shall designate the entitlements in each priority of service category in the currently effective curtailment plan of the interstate pipeline supplier which reflects the attributed priority 2 entitlements and request that those entitlements which are reflected in such priority of service categories in the currently effective curtailment plan are removed from such priority of service category.

(3) Subject to §281.210, the interstate pipeline supplier shall classify the attributed priority 2 entitlements as priority 2 entitlements and shall reduce the entitlements of the interstate pipeline purchaser in such other priority of service categories as designated by the interstate pipeline purchaser, (in ac-

cordance with paragraph (d)(2) of this section).

[44 FR 26862, May 8, 1979]

### § 281.208 Calculation of essential agricultural requirements and attributable priority 2 entitlements.

(a) *Scope.* This section sets forth the method by which:

(1) An essential agricultural user calculates total essential agricultural requirements, direct essential agricultural requirements, and indirect essential agricultural requirements;

(2) A local distribution company calculates attributable indirect essential agricultural requirements for its essential agricultural user customers; and

(3) An interstate pipeline purchaser calculates its attributable priority 2 entitlements.

(b) *Calculation by an essential agricultural user—*(1) *Total essential agricultural requirements—*(i) *General Rule.* (A) The essential agricultural requirements of an essential agricultural user are those volumes (expressed in daily, monthly, seasonal or other appropriate periodic volumes) designated by the Secretary of Agriculture and calculated in accordance with 7 CFR 2900.4; less

(B) Alternative fuel volumes (determined under §281.304).

(ii) *Definitions.* Current requirements as used in 7 CFR part 2900 means the lesser of

(A) The energy consumption from the most recent 12 month period for which actual data is available, with necessary adjustments; or

(B) The maximum volume of natural gas for which the essential agricultural user has installed capability to use for essential agricultural uses.

(2) *Attribution of total essential agricultural requirement and indirect essential agricultural requirements.* (i) The essential agricultural user shall attribute its total essential agricultural requirements among all its sources of supply of natural gas in accordance with §281.209.

(ii) The direct essential agricultural requirement with respect to a particular interstate pipeline supplier is that part of the total essential agricultural requirements attributed under

§ 281.209 to the direct interstate pipeline supplier. The indirect essential agricultural requirement with respect to a particular local distribution company supplier is that part of the total essential agricultural requirements attributed under § 281.209 to a direct local distribution company supplier.

(c) *Calculation by local distribution companies.* (1) A local distribution company shall attribute under § 281.209 the indirect essential agricultural requirements of each of its essential agricultural user customers (calculated under paragraph (b)(2) of this section) among all the interstate pipelines which are direct suppliers of the local distribution company.

(2) That part of the indirect essential agricultural requirements which the local distribution company attributes to a particular interstate pipeline supplier is the attributed indirect essential agricultural requirements attributed to that interstate pipeline.

(d) *Interstate pipelines.* (1) An interstate pipeline purchaser may attribute under § 281.209 the priority 2 entitlements it includes in its index of entitlements among its direct interstate pipeline suppliers.

(2) The attributable priority 2 entitlements attributed to a particular interstate pipeline supplier is that part of the priority 2 entitlements of the interstate pipeline purchaser which it attributes to a particular interstate pipeline supplier.

[44 FR 26862, May 8, 1979, as amended at 44 FR 62490, Oct. 31, 1979]

#### § 281.209 Attribution.

(a) *Applicability.* (1) This section sets forth the rules for attributing total essential agricultural requirements by an essential agricultural user, indirect essential agricultural requirements of an essential agricultural user by its local distribution company supplier and priority 1 and 2 entitlements by an interstate pipeline purchaser.

(2) This section does not apply to an essential agricultural user or local distribution company which receives all its natural gas supplies from a single source, or an interstate pipeline purchaser which does not receive natural gas from any other interstate pipeline.

(b) *Natural gas supplies included for purposes of attribution.* (1) For purposes of attribution in accordance with this section, natural gas from all direct sources, including but not limited to pipeline production, production by independent producers, production by affiliates, SNG facilities and natural gas purchased from local distribution companies, and interstate pipelines shall be included.

(2)(i) An essential agricultural user, which attributes under paragraph (d) a portion of the volumes which are its total essential agricultural requirements to a direct source of natural gas other than a direct supplier may not seek classification to priority 2 under § 281.207 for such portion of its total essential agricultural requirements.

(ii) A local distribution company which attributes under paragraph (e) a portion of the volumes which are its indirect essential agricultural requirements to a direct source of natural gas other than a direct supplier may not seek classification to priority 2 under § 281.207 for such portion of its indirect essential agricultural requirements.

(iii) An interstate pipeline purchaser which attributes under paragraph (f) a portion of the volumes of its priority 1 or 2 entitlements to a direct source of natural gas other than a direct supplier may not seek reclassification to priority 1 or classification to priority 2, respectively, for such portion of its priority 1 and 2 entitlements.

(c) *Definitions.* For purposes of this section:

(1) *Direct supplier* means, with respect to an essential agricultural user, an interstate pipeline or local distribution company which directly supplies such essential agricultural user, with respect to a local distribution company, an interstate pipeline which directly supplies such local distribution company and, with respect to an interstate pipeline purchaser, and interstate pipeline which directly supplies the interstate pipeline purchaser.

(2) *Base period* of a direct supplier means the fixed historical period in which entitlements of the customer of the direct supplier were established for purposes of the currently effective curtailment plan of such direct supplier.

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(3) *Annual quantity entitlements* with respect to a particular direct supplier means the total entitlements an essential agricultural user, local distribution company or interstate pipeline is entitled to purchase from that direct supplier in a calendar year under the currently effective curtailment plan.

(d) *Essential agricultural user.* (1) An essential agricultural user shall calculate its attributable essential agricultural requirements attributable to a particular direct supplier by multiplying its total essential agricultural requirements by the Annual Quantity Entitlements from such direct supplier and dividing the product (numerator) by the sum of all Annual Quantity Entitlements and all volumes received from sources not providing an Annual Quantity Entitlement to such user (denominator).

(2) If an essential agricultural user does not have annual quantity entitlements only with respect to one of its direct suppliers, the attributable essential agricultural requirements attributable to such direct supplier shall be that part of the total essential agricultural requirements not attributed under paragraph (d)(1) of this section.

(3) If an essential agricultural user does not have Annual Quantity Entitlements with respect to more than one of its direct suppliers, the attributable essential agricultural requirements attributable to a particular direct supplier shall be calculated by multiplying its total essential agricultural requirements by the total volume of natural gas received from such supplier in 1972 and dividing the product (numerator) by the total supplies of natural gas received from all sources in 1972 (denominator).

(e) *Local distribution company.* A local distribution company shall calculate its attributable indirect essential agricultural requirements among its direct suppliers in the same manner as it attributed its supplies to its direct suppliers for purposes of establishing entitlements in the currently effective curtailment plans of such direct supplier.

(f) *Interstate pipelines.* An interstate pipeline shall attribute Priority 1 and 2 entitlements respectively among its direct pipeline suppliers in the same manner as it attributed its supplies to

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its direct pipeline suppliers for purposes of establishing entitlements in the currently effective curtailment plans of such direct suppliers.

[44 FR 26862, May 8, 1979, as amended by Order 29–C, 44 FR 61344, Oct. 25, 1979]

### § 281.210 Conflicting data.

(a) *Interstate pipelines.* Notwithstanding any other provision of this subpart, if the records of an interstate pipeline contain information which directly conflicts with a request for reclassification of priority 1 entitlements under § 281.206, or classification of priority 2 entitlements under § 281.207, the interstate pipeline may not include such volumes in priority 1 or 2 of its index of entitlements.

(b) *Local distribution companies.* Notwithstanding the provisions of § 281.207(c), if the records of a local distribution company contain information which directly conflicts with a request from an essential agricultural user to have the local distribution company to seek classification of volumes in priority 2, the local distribution company may not seek classification for such volumes.

[44 FR 26862, May 8, 1979]

### § 281.211 Filing and documentation.

(a) *Priority 1—1) Direct sales customers and local distribution companies.* (i) Each request of a direct sale customer and local distribution company customer for reclassification of high-priority entitlements (as defined in § 281.206) to priority 1 entitlements shall be made in writing no later than July 31, 1979, and shall be accompanied by the data described in paragraph (a)(1)(ii) of this section.

(ii)(A) A table indicating high-priority entitlements (as defined in § 281.206) and the end-use of the natural gas in each priority of service category in the currently effective curtailment plan for which priority 1 reclassification is requested.

(B) A copy of the end-use data used to establish the high-priority requirements and designated end-use of the natural gas.

(2) *Interstate pipelines.* (i) Each interstate pipeline purchaser which reclassifies high-priority requirements of its

customers as priority 1 entitlements may request that its high-priority requirements in the currently effective curtailment plan of its interstate pipeline suppliers (equal to the attributable priority 1 entitlements) be reclassified as priority 1 entitlements. Such requests shall be made in writing no later than August 31, 1979 and shall be accompanied by the data described in paragraph (a)(2)(ii) of this section.

(ii)(A) A table indicating high-priority entitlements (as defined in §281.206) and end-use of the natural gas in each priority of service category in the currently effective curtailment plan of the interstate pipeline supplier for which priority 1 reclassification is requested.

(B) A copy of the end-use data used to establish the high-priority requirements and designated end-use of the natural gas.

(C) A table indicating the volumes and priority of service categories for which each of direct sale customers and local distribution company customers sought reclassification to priority 1.

(b) *Priority 2—1) Essential agricultural users.* (i) Each request for classification of essential agricultural requirements as priority 2 entitlements shall be made in writing to the local distribution company supplier or the direct interstate pipeline supplier, as appropriate, no later than June 15 of each year, and shall set forth all calculations made in accordance with this subpart.

(ii) The request shall be accompanied by a statement that;

(A) Indicates the intended end-use(s) and volume(s) of the natural gas for which priority 2 entitlements are requested.

(B) Indicates the SIC Code activities of the essential agricultural user which qualifies it as an essential agricultural user in accordance with 7 CFR 2900.3.

(C) Includes the data and calculations used to determine essential agricultural requirements under 7 CFR 2900.4.

(D) Includes with respect to any essential agricultural user to which Subpart C applies the data and calculations necessary to determine alternative fuel volumes under §281.304.

(iii) The statement under paragraph (b)(1)(ii) shall be signed by a responsible official of the essential agricultural user. Such official shall swear or affirm that the statements are true to the best of his information, knowledge and belief.

(2) *Local distribution companies.* Each request for classification of essential agricultural requirements as priority 2 requirements shall be made in writing to the direct interstate pipeline supplier no later than June 30 of each year, and shall set forth all calculations made in accordance with this subpart and all copies of all requests received from its essential agricultural uses under paragraph (b)(1) of this section.

(3) *Interstate pipelines.* Each request of an interstate pipeline purchaser for classification of attributable priority 2 entitlements as priority 2 entitlements shall be made in writing to the direct interstate pipeline supplier no later than July 15 of each year, and shall set forth all calculations made in accordance with this subpart and shall include copies of all requests of essential agricultural users and local distribution companies under paragraphs (b)(1) and (2) of this section.

(4) *Subsequent request.* (i) For 1979, changes in priority 2 entitlements for essential agricultural use establishments that have the ability to use an alternative fuel shall be filed under Subpart C of this part.

(ii) For years subsequent to 1979, the data required by this paragraph must be filed only to the extent that there has been a change in essential agricultural requirements.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

[44 FR 26862, May 8, 1979, as amended at 44 FR 45923, Aug. 6, 1979; 44 FR 62490, Oct. 31, 1979; Order 55-B, 45 FR 54740, July 18, 1980; Order 145, 46 FR 27913, May 22, 1981]

#### **§281.212 Draft tariff sheets and index of entitlements.**

(a) Each interstate pipeline shall prepare draft tariff sheets and a draft index of entitlements in accordance with this subpart.

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(b) The draft tariff sheets and index of entitlements shall be served on all customers of the interstate pipeline no later than August 1 of each year.

(c) Copies of all documents received by the interstate pipeline under § 281.210, the draft tariff sheets and the draft index of entitlements shall be served on the Data Verification Committee no later than August 1 of each year.

(Natural Gas Policy Act of 1978, Pub. L. 95-621, Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

[44 FR 26862, May 8, 1979, as amended at 44 FR 45923, Aug. 6, 1979; Order 145, 46 FR 27913, May 22, 1981]

## § 281.213 Data Verification Committee.

(a) Each interstate pipeline shall establish a Data Verification Committee no later than August 1, 1979. It shall include, at a minimum, a representative of the interstate pipeline, Commission staff, a large and small local distribution company, and an essential agricultural user. The appropriate state and local regulatory bodies, and a representative of the United States Department of Agriculture may, at their option, be members.

(b) The Data Verification Committee shall review all calculations behind the draft tariff sheets and the proposed index of entitlements. The Data Verification Committee may request, and the interstate pipeline shall immediately supply, any information requested by the Data Verification Committee.

(c) Any interested person may file a written protest concerning the index of entitlements. Such protests shall be filed with the Data Verification Committee no later than August 15 of each year.

(d) The Data Verification Committee shall review the draft tariff sheets and index of entitlements and shall review the underlying data for uniformity in preparation.

(e) The Data Verification Committee shall prepare a report concerning the proposed index of requirements and the draft tariff sheets for the interstate pipeline. It shall, at a minimum, specify all arithmetic errors and contain an

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evaluation of all protests. It may contain a proposed settlement of contested draft tariff sheets. The report shall be submitted to the interstate pipeline no later than September 1 of each year.

(Natural Gas Act, 15 U.S.C. 717-717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267; Administrative Procedure Act, 5 U.S.C. 551 *et seq.*)

[44 FR 26862, May 8, 1979, as amended at 44 FR 45923, Aug. 6, 1979; Order 29-C, 44 FR 61345, Oct. 25, 1979; Order 145, 46 FR 27913, May 22, 1981]

## § 281.214 Notice, complaint and remedy.

(a) *Complaint.* Any interested person may file a complaint concerning an alleged violation of this subpart under § 385.206 of this chapter.

(b) *Remedy.* If the Commission determines that a violation of this subpart has occurred, it shall take whatever action it deems appropriate in the circumstances. Such action may include payback, in kind or in dollars, by the person benefitting from the violation.

[44 FR 26862, May 8, 1979, as amended at 44 FR 61345, Oct. 25, 1979; Order 225, 47 FR 19058, May 3, 1982]

## § 281.215 Additional relief.

If an interstate pipeline rejects (under § 281.210 or otherwise) a request for reclassification under § 281.206 or classification under § 281.207 or if a local distribution company does not request (for any reason including the provisions of § 281.210) classification under § 281.206 on behalf of its high priority uses or reclassification on behalf of its essential agricultural users, the person aggrieved by such action may file a request for relief from curtailment under § 385.206 of this chapter. The request shall contain the information required in § 2.78(b) of the Commission Regulations.

[44 FR 26862, May 8, 1979, as amended by Order 225, 47 FR 19058, May 3, 1982]

### Subpart C—Alternative Fuel Determination

AUTHORITY: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46267.

SOURCE: Order 55, 44 FR 62490, Oct. 31, 1979, unless otherwise noted.

#### § 281.301 Purpose.

The purpose of this subpart is to determine the economic practicability and reasonable availability of alternative fuels, as prescribed in section 401(b) of the Natural Gas Policy Act of 1978 for use by essential agricultural use establishments that seek priority 2 entitlements for natural gas.

#### § 281.302 Applicability.

This subpart applies to—

(a) Any essential agricultural use establishment for which an essential agricultural user:

(1) Has requested that natural gas be classified as priority 2 entitlements by an interstate pipeline under § 281.207; and

(2) Which has requested from any direct supplier priority 2 entitlements in excess of 300 Mcf per day; and

(b) Any essential agricultural use establishment with a new boiler, other than a diesel engine or turbine designed to use distillate fuels as the only alternative to natural gas, that:

(1) Has a capacity in excess of 300 Mcf of natural gas per day; and

(2) Is put into service for the first time after August 29, 1979.

#### § 281.303 Definitions.

For purposes of this subpart—

(a) *Ability to use* a particular alternative fuel means that an essential agricultural use establishment had, on August 29, 1979, or thereafter acquired the installed physical capability to use the alternative fuel and has used that alternative fuel, in any amount, at any time after 1973, for an essential agricultural use.

(b) *Alternative fuel* means coal or residual fuel oil.

(c) *Boiler* means any fuel burning device that is used for generating steam or electricity or producing hot water

for space heating or manufacturing processes.

(d) *Capacity* means the volumes of natural gas used if the boiler is operated at nameplate rated capacity for a continuous 16-hour period.

(e) *Coal* means lignite or any rank of bituminous coal or anthracite coal.

(f) *Direct supplier* means, with respect to an essential agricultural use establishment, an interstate pipeline or local distribution company which directly supplies such essential agricultural use establishment; with respect to a local distribution company, an interstate pipeline which directly supplies such local distribution company; and, with respect to an interstate pipeline purchaser, an interstate pipeline which directly supplies the interstate pipeline purchaser.

(g) *Distillate fuel* means Nos. 1 and 2 heating oils, diesel fuel, and No. 4 fuel oil, as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM, D396 and D975.

(h) *Essential agricultural requirements* means volumes of natural gas certified by the Secretary of Agriculture and calculated in accordance with 7 CFR 2900.4 and § 281.208(b) of this part.

(i) *Essential agricultural use* means any use of natural gas, as defined in § 281.203(a)(2) of this chapter and 7 CFR 2900.3.

(j) *Essential agricultural user* means an essential agricultural user as defined in § 281.203(b)(3).

(k) *Essential agricultural use establishment* is used as defined in 7 CFR 2900.2.

(l) *Local distribution company* means a local distribution company served directly by an interstate pipeline.

(m) *Priority 2 entitlements* means the essential agricultural requirements of an essential agricultural use establishment which requirements are classified by an interstate pipeline as priority 2 in its curtailment plan under Subpart B.

(n) *Residual fuel oil* means Nos. 5 and 6 oil, Bunker C, and Navy Special as defined in the standard specification for fuel oils published by the American Society for Testing and Materials, ASTM, D396.

[44 FR 62490, Oct. 31, 1979, as amended by Order 55–B, 45 FR 54740, July 18, 1980]

## § 281.304

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### § 281.304 Computation of alternative fuel volume.

(a) *General rule.* For purposes of § 281.208(b)(1)(i)(B), and § 281.305:

(1) Alternative fuel volume of an essential agricultural user is equal to the sum of the alternative fuel volumes for each agricultural use establishment for which such user has requested from any direct supplier priority 2 entitlements in excess of 300 Mcf.

(2) Alternative fuel volume for an agricultural use establishment is that portion of such establishment's natural gas requirements for which such establishment has requested priority 2 curtailment and for which the establishment had on August 29, 1979, or thereafter, the ability to use alternative fuel.

(b) *New boilers.* For purposes of § 281.208(b)(1)(i)(B) and § 281.305: any new boiler of an essential agricultural use

establishment shall be deemed to have alternative fuel volumes, if the boiler:

(1) Has a capacity in excess of 300 Mcf of natural gas per day;

(2) Is put into service for the first time after August 29, 1979; and

(3) Is not a diesel engine or turbine designed to use distillate fuels as the only substitute for natural gas.

[44 FR 62490, Oct. 31, 1979, as amended by Order 55–B, 45 FR 54740, July 18, 1980]

### § 281.305 General rule.

Any essential agricultural user subject to this subpart that has requested from any direct supplier priority 2 classification for volumes for any essential agricultural use establishment shall reduce its essential agricultural requirements calculated under § 281.208 to reflect the exclusion of volumes of natural gas for which its essential agricultural establishment has alternative fuel volumes under § 281.304.

### APPENDIX A<sup>1</sup> TO PART 281—COMPARISON OF SELECTED FUEL PRICE DATA, FPC FORM NO. 423 VERSUS MONTHLY ENERGY REVIEW, 1976—JANUARY 1980

Type of fuel	FPC form No. 423 price data <sup>1</sup>					Monthly energy review price data <sup>2</sup>				
	1976	1977	1978	1979	January 1980	1976	1977	1978	1979	January 1980
Cents per MMBtu										
Fuel Oil:										
No. 2 .....	235.1	264.3	271.9	402.1	564.4	226.4	257.3	268.2	403.1	537.2
Low Sulfur No. 6 .....	207.1	229.1	225.1	320.2	453.3	193.6	221.3	216.8	322.4	466.5
High Sulfur No. 6 .....	168.7	199.9	186.7	264.7	361.4	165.9	195.2	186.1	261.5	349.6
All No. 6 .....	195.9	220.4	212.3	299.7	423.5	182.8	210.4	202.7	297.0	417.7
Coal: All Grades .....	84.8	94.7	111.6	122.4	128.7	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )
Natural Gas .....	103.4	130.0	143.8	175.4	194.8	97.2	131.9	154.1	201.8	237.3
Actual price difference (fuel oil and coal versus natural gas)										
Fuel Oil:										
No. 2 .....	131.7	134.3	128.1	226.7	369.6	129.2	125.4	114.1	201.3	299.9
Low Sulfur No. 6 .....	103.7	99.1	81.3	144.8	258.5	96.4	89.4	62.7	120.6	229.2
High Sulfur No. 6 .....	65.3	69.1	42.9	89.3	166.6	68.7	66.3	32.0	59.7	112.3
All No. 6 .....	92.5	90.4	68.5	124.3	228.7	85.6	78.5	48.6	95.2	180.4
Coal: All Grades .....	(18.6)	(35.3)	(32.2)	(53.0)	(66.1)	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )

<sup>1</sup>As reported in DOE/EIA Energy Data Report entitled *Cost and Quality of Fuels for Electric Utility Plants* (Annual summary data 1976–1979) and Monthly Report for January 1980. Note: All prices are delivered prices to steam electric plants. Prices paid for No. 6 fuel oil include prices paid for minor amounts of No. 4 and No. 5 fuel oil, crude and topped crude.

Type of fuel	FPC form No. 423 price data <sup>1</sup>					Monthly energy review price data <sup>2</sup>				
	1976	1977	1978	1979	January 1980	1976	1977	1978	1979	January 1980
	Price difference ratio <sup>4</sup> (fuel oil and coal versus natural gas)—ratio									
Fuel Oil:										
No. 2 .....	1.274	1.033	.891	1.292	1.897	1.329	.951	.740	.998	1.264
Low Sulfur No. 6 .....	1.003	.762	.565	.826	1.327	.992	.678	.407	.598	.966
High Sulfur No. 6 .....	.632	.538	.298	.509	.855	.707	.480	.208	.296	.473
All No. 6 .....	.895	.695	.476	.709	1.174	.881	.595	.315	.472	.760
Coal: All Grades .....	(.180)	(.272)	(.224)	(.302)	(.339)	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )	( <sup>3</sup> )

<sup>1</sup> As reported in DOE/EIA Energy Data Report entitled *Cost and Quality of Fuels for Electric Utility Plants* (Annual summary data 1976-1979) and Monthly Report for January 1980). Note: All prices are delivered prices to steam electric plants. Prices paid for No. 6 fuel oil include prices paid for minor amounts of No. 4 and No. 5 fuel oil, crude and topped crude.

<sup>2</sup> Fuel oil prices are reported on FEA Form P302-M-1, "Petroleum Industry Monthly Report for Product Prices." Natural Gas Prices are those paid by industrial customers of major interstate pipeline companies as reported on FPC Form No. 11, "Natural Gas Pipeline Company Monthly Statement."

<sup>3</sup> The price data for coal is the same as shown under FPC Form No. 423 price data.

<sup>4</sup> Mathematically the price difference ratio is  $P_2 - P_1 / P_1$ ; Where  $P_2$  = the price of fuel oil or coal and  $P_1$  = the price of natural gas. The ratio indicates the percent difference between natural gas and alternate fuel prices. For example in January 1980 electric utilities reported that in that month they paid 1.897 times more (189.7 percent) for No. 2 fuel oil than they paid for natural gas.

As determined in Docket No. RM79-40 NOPR issued June 3, 1980, corrected for clerical/typographical error.

[Order 55-B, 45 FR 54740, July 18, 1980]

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

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### Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others

- 284.301 Applicability.
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- 284.303 OCS blanket certificates.

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- 284.401 Definitions.
- 284.402 Blanket marketing certificates.
- 284.403 Code of conduct for persons holding blanket marketing certificates.

AUTHORITY: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

SOURCE: Order 46, 44 FR 52184, Sept. 7, 1979, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 284 appear at 65 FR 10222, Feb. 25, 2000.

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### Subpart A—General Provisions and Conditions

#### § 284.1 Definitions.

(a) *Transportation* includes storage, exchange, backhaul, displacement, or other methods of transportation.

(b) *Appropriate state regulatory agency* means a state agency which regulates intrastate pipelines and local distribution companies within such state. When used in reference to rates and charges, the term includes only those agencies which set rates and charges on a cost-of-service basis.

(c) *Market center* means an area where gas purchases and sales occur at the intersection of different pipelines.

[44 FR 52184, Sept. 7, 1989, as amended by Order 636, 57 FR 13315, Apr. 16, 1992]

#### § 284.2 Refunds and interest.

(a) *Refunds*. Any rate or charge collected for any sale, transportation, or assignment conducted pursuant to this part which exceeds the rates or charges authorized by this part shall be refunded.

(b) *Interest*. All refunds made pursuant to this section must include interest at an amount determined in accordance with § 154.501(d) of this chapter.

[44 FR 52184, Sept. 7, 1979, as amended at 44 FR 53505, Sept. 14, 1979; Order 273, 48 FR 1288; Jan. 12, 1983; Order 581, 60 FR 53072, Oct. 11, 1995]

#### § 284.3 Jurisdiction under the Natural Gas Act.

(a) For purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply to any transportation or sale in interstate commerce of natural gas if such a transaction is authorized pursuant to section 311 or 312 of the NGPA.

(b) For purposes of the Natural Gas Act, the term “natural gas company” (as defined by section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transaction involving natural gas if the provisions of the Natural Gas Act do not apply to such transaction by reason of paragraph (a) of this section.

(c) The Natural Gas Act shall not apply to facilities utilized solely for

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transportation authorized by section 311(a) of the NGPA.

[44 FR 52184, Sept. 7, 1979, as amended by Order 581, 60 FR 53072, Oct. 11, 1995]

### § 284.4 Reporting.

(a) *Reports in MMBtu.* All reports filed pursuant to this part must indicate quantities of natural gas in MMBtu's. An MMBtu means a million British thermal units. A British thermal unit or Btu means the quantity of heat required to raise the temperature of one pound avoirdupois of pure water from 58.5 degrees to 59.5 degrees Fahrenheit, determined in accordance with paragraphs (b) and (c) of this section.

(b) *Measurement.* The Btu content of one cubic foot of natural gas under the standard conditions specified in paragraph (c) of this section is the number of Btu's produced by the complete combustion of such cubic foot of gas, at constant pressure with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by such combustion is condensed to a liquid state.

(c) *Standard conditions.* The standard conditions for purposes of paragraph (b) of this section are as follows: The gas is saturated with water vapor at 60 degrees Fahrenheit under a pressure equivalent to that of 30.00 inches of mercury at 32 degrees Fahrenheit, under standard gravitational force (980.665 centimeters per second squared).

[Order 581, 60 FR 53072, Oct. 11, 1995]

### § 284.5 Further terms and conditions.

The Commission may prospectively, by rule or order, impose such further terms and conditions as it deems appropriate on transactions authorized by this part.

### § 284.6 Rate interpretations.

(a) *Procedure.* A pipeline may obtain an interpretation pursuant to subpart L of part 385 of this chapter concerning whether particular rates and charges comply with the requirements of this part.

(b) *Address.* Requests for interpretations should be addressed to: FERC

Part 284 Interpretations, Office of General Counsel, Federal Energy Regulatory Commission, Washington, DC 20426.

[44 FR 66791, Nov. 21, 1979; 44 FR 75383, Dec. 20, 1979, as amended by Order 225, 47 FR 19058, May 3, 1982; Order 581, 60 FR 53072, Oct. 11, 1995]

### § 284.7 Firm transportation service.

(a) *Firm transportation availability.* (1) An interstate pipeline that provides transportation service under subpart B or G of this part must offer such transportation service on a firm basis and separately from any sales service.

(2) An intrastate pipeline that provides transportation service under Subpart C may offer such transportation service on a firm basis.

(3) *Service on a firm basis* means that the service is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service.

(4) An interstate pipeline that provided a firm sales service on May 18, 1992, and that offers transportation service on a firm basis under subpart B or G of this part, must offer a firm transportation service under which firm shippers may receive delivery up to their firm entitlements on a daily basis without penalty.

(b) *Non-discriminatory access.* (1) An interstate pipeline or intrastate pipeline that offers transportation service on a firm basis under subpart B, C or G must provide such service without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind.

(2) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must provide each service on a basis that is equal in quality for all gas supplies transported under that service, whether purchased from the pipeline or another seller.

(3) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part may

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not include in its tariff any provision that inhibits the development of market centers.

(c) *Reasonable operational conditions.* Consistent with paragraph (b) of this section, a pipeline may impose reasonable operational conditions on any service provided under this part. Such conditions must be filed by the pipeline as part of its transportation tariff.

(d) *Segmentation.* An interstate pipeline that offers transportation service under subpart B or G of this part must permit a shipper to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible.

(e) *Reservation fee.* Where the customer purchases firm service, a pipeline may impose a reservation fee or charge on a shipper as a condition for providing such service. Except for pipelines subject to subpart C of this part, if a reservation fee is charged, it must recover all fixed costs attributable to the firm transportation service, unless the Commission permits the pipeline to recover some of the fixed costs in the volumetric portion of a two-part rate. A reservation fee may not recover any variable costs or fixed costs not attributable to the firm transportation service. Except as provided in this paragraph, the pipeline may not include in a rate for any transportation provided under subpart B, C or G of this part any minimum bill or minimum take provision, or any other provision that has the effect of guaranteeing revenue.

(f) *Limitation.* A person providing service under Subpart B, C or G of this part is not required to provide any requested transportation service for which capacity is not available or that would require the construction or acquisition of any new facilities.

[Order 436, 50 FR 42493, Oct. 18, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 284.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 284.8 Release of firm capacity on interstate pipelines.

(a) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must include in its tariff a mechanism for firm shippers to release firm capacity to the pipeline for resale by the pipeline on a firm basis under this section.

(b) Firm shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restriction on the terms or conditions of the release. A firm shipper may arrange for a replacement shipper to obtain its released capacity from the pipeline. A replacement shipper is any shipper that obtains released capacity.

(c) Except as provided in paragraph (h) of this section, a firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the terms and conditions under which the shipper will release its capacity. The firm shipper must also notify the pipeline of any replacement shipper designated to obtain the released capacity under the terms and conditions specified by the firm shipper.

(d) The pipeline must provide notice of offers to release or to purchase capacity, the terms and conditions of such offers, and the name of any replacement shipper designated in paragraph (b) of this section, on an Internet web site, for a reasonable period.

(e) The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms and conditions of the release. If more than one person offers the highest rate and meets the terms and conditions of the release, the released capacity may be allocated on a basis provided in the pipeline's tariff, provided however, if the replacement shipper designated in paragraph (b) of this section offers the highest rate, the capacity must be allocated to the designated replacement shipper.

(f) Unless otherwise agreed by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect, with the net proceeds from any resale to a replacement shipper credited to the releasing shipper's reservation charge.

(g) To the extent necessary, a firm shipper on an interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part is granted a limited-jurisdiction blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act solely for the purpose of releasing firm capacity pursuant to this section.

(h)(1) A release of capacity by a firm shipper to a replacement shipper for any period of 31 days or less, or for any term at the maximum tariff rate applicable to the release, need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.

(2) When a release under paragraph (h)(1) of this section is at less than the maximum tariff rate, a firm shipper may not roll-over, extend, or in any way continue the release at less than the maximum tariff rate without complying with the requirements of paragraphs (c) through (e) of this section, and may not re-release to the same replacement shipper under this paragraph at less than the maximum tariff rate until twenty-eight days after the first release period has ended.

(i) *Waiver of maximum rate ceiling.* Until September 30, 2002, the maximum rate ceiling does not apply to capacity release transactions of less than one year. The provision of paragraph (h)(1) of this section providing an exemption from the posting and bidding requirements for transactions at the applicable maximum tariff rate for pipeline services will not apply as long as the waiver of the rate ceiling is in effect. With respect to releases of 31 days or less under paragraph (h) of this section, the requirements of paragraph (h)(2) of

this section will apply to all such releases regardless of the rate charged.

[Order 636, 57 FR 13318, Apr. 16, 1992, as amended by Order 636-A, 57 FR 36217, Aug. 12, 1992; Order 577, 60 FR 16983, Apr. 4, 1995; Order 577-A, 60 FR 30187, June 8, 1995. Redesignated and amended by Order 637, 65 FR 10220, Feb. 25, 2000; Order 637-A, 65 FR 35765, June 5, 2000]

#### **§ 284.9 Interruptible transportation service.**

(a) *Interruptible transportation availability.* (1) An interstate pipeline that provides firm transportation service under subpart B or G of this part must also offer transportation service on an interruptible basis under that subpart or subparts and separately from any sales service.

(2) An intrastate pipeline that provides transportation service under Subpart C may offer such transportation service on an interruptible basis.

(3) *Service on an interruptible basis* means that the capacity used to provide the service is subject to a prior claim by another customer or another class of service and receives a lower priority than such other classes of service.

(b) The provisions regarding non-discriminatory access, reasonable operational conditions, and limitations contained in § 284.7 (b), (c), and (f) apply to pipelines providing interruptible service under this section.

(c) *Reservation fee.* No reservation fee may be imposed for interruptible service. A pipeline's rate for any transportation service provided under this section may not include any minimum bill provision, minimum take provision, or any other provision that has the effect of guaranteeing revenue.

[Order 436, 50 FR 42494, Oct. 18, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 284.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

#### **§ 284.10 Rates.**

(a) *Applicability.* Any rate charged for transportation service under subparts B and G of this part must be established under a rate schedule that is filed with the Commission prior to commencement of such service and

that conforms to the requirements of this section.

(b) *Rate objectives.* Maximum rates for both peak and offpeak periods must be designed to achieve the following three objectives:

(1) Rates for service during peak periods should ration capacity;

(2) Rates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput; and

(3) The pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service.

(c) *Rate design*—(1) *Volumetric rates.* Except as provided in § 284.7(e), any rate filed for service subject to this section must be a one-part rate that recovers the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue. Such rate must separately identify cost components attributable to transportation, storage, and gathering costs.

(2) *Based on projected units of service.* Any rate filed for service subject to this section must be designed to recover costs on the basis of projected units of service. The fixed costs allocated to capacity reservations, as determined in accordance with § 284.7(e), should be used along with the projected nominations accepted by the pipeline to compute the unit reservation fee. The remaining fixed costs and all variable costs should be used to determine the volumetric rate computed on the basis of projected volumes to be transported. The units projected for the service in rates filed under this section may be changed only in a subsequent rate filing under section 4 of the Natural Gas Act.

(3) *Differentiation due to time and distance.* Any rate filed for service subject to this section must reasonably reflect any material variation in the cost of providing the service due to:

(i) Whether the service is provided during a peak or an off-peak period; and

(ii) The distance over which the transportation is provided.

(4) *Cost basis for rates.* (i) Any maximum rate filed under this section must be designed to recover on a unit basis, solely those costs which are properly allocated to the service to which the rate applies.

(ii) Any minimum rate filed under this section must be based on the average variable costs which are properly allocated to the service to which the rate applies.

(5) *Rate flexibility.* (i) Any rate schedule filed under this section must state a maximum rate and a minimum rate.

(ii)(A) Except as provided in paragraph (d)(5)(ii)(B) of this section the pipeline may charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.

(B) If a pipeline does not hold a blanket certificate under Subpart G of this part, it may not charge, in a transaction involving its marketing affiliate, a rate that is lower than the highest rate it charges in any transaction not involving its marketing affiliate.

(iii) The pipeline may not file a revised or new rate designed to recover costs not recovered under rates previously in effect.

[Order 436, 50 FR 42493, Oct. 18, 1985, as amended at 50 FR 52274, Dec. 23, 1985; 53 FR 22163, June 14, 1988; Order 522, 55 FR 12169, Apr. 2, 1990; Order 581, 60 FR 53072, Oct. 11, 1995. Redesignated and amended by Order 637, 65 FR 10220, Feb. 25, 2000]

#### § 284.11 Environmental compliance.

(a) Any activity involving the construction of, or the abandonment with removal of, facilities that is authorized pursuant to § 284.3(c) and subpart B or C of this part is subject to the terms and conditions of § 157.206(b) of this chapter.

(b) *Advance notification*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, at least 30 days prior to commencing construction a company must file notification with the Commission of any activity described in paragraph (a) of this section.

(2) *Exception.* The advance notification described in paragraph (b)(1) of this section is not required if the cost of the project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter.

(c) *Contents of advance notification.* The advance notification described in paragraph (b)(1) of this section must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(b) of this chapter;

(3) Current U.S. Geological Survey 7.5-minute series topographical maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(d) *Reporting requirements.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each activity that is described in paragraph (a) of this section, and which was completed during the previous calendar year and exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such activity, the company must include all of the information described in paragraph (c) of this section.

[Order 544, 57 FR 46495, Oct. 9, 1992, as amended by Order 581, 60 FR 53072, Oct. 11, 1995; Order 603-A, 64 FR 54537, Oct. 7, 1999]

#### § 284.12 Standards for pipeline business operations and communications.

(a) *Incorporation by reference of NAESB standards.* (1) An interstate pipeline that transports gas under subparts B or G of this part must comply with the following business practice and electronic communication standards promulgated by the North American Energy Standards Board, which are incorporated herein by reference:

(i) Additional Standards (General Standards and Creditworthiness Standards) (Version 1.7, December 31, 2003);

(ii) Nominations Related Standards (Version 1.7, December 31, 2003, including errata, October 15, 2004 and April 1, 2005);

(iii) Flowing Gas Related Standards (Version 1.7, December 31, 2003);

(iv) Invoicing Related Standards (Version 1.7, December 31, 2003);

(v) Electronic Delivery Mechanism Related Standards (Version 1.7, December 31, 2003) with the exception of Standard 4.3.4, and including the standards contained in 2004 Annual Plan Item 2 (June 25, 2004) (Order No. 2004 standards) and the standard contained in 2005 Annual Plan Item 8 (May 3, 2005) (Affiliate Order standards), and the standards contained in Recommendation R03035A (October 20, 2004) (gas quality reporting); and

(vi) Capacity Release Related Standards (Version 1.7, December 31, 2003, including errata, October 15, 2004).

(2) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the North American Energy Standards Board, 1301 Fannin, Suite 2350, Houston, TX 77002. Copies may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) *Business practices and electronic communication requirements.* An interstate pipeline that transports gas under subparts B or G of this part must comply with the following requirements. The regulations in this paragraph adopt the abbreviations and definitions contained in the Gas Industry Standards Board standards incorporated by reference in paragraph (b)(1) of this section.

(1) Nominations.

(i) Intra-day nominations.

(A) A pipeline must give scheduling priority to an intra-day nomination submitted by a firm shipper over nominated and scheduled volumes for interruptible shippers. When an interruptible shipper's scheduled volumes are to be reduced as a result of an intra-day nomination by a firm shipper, the interruptible shipper must be provided with advance notice of such reduction and must be notified whether penalties will apply on the day its volumes are reduced.

(B) An intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day at 9 a.m. CCT.

(ii) *Capacity release scheduling.* (A) Pipelines must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity.

(B) A pipeline must permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. Each replacement shipper must be provided with advance notice of such recall and must be notified whether penalties will apply on the day its volumes are reduced.

(2) *Flowing gas.*

(i) *Operational balancing agreements.* A pipeline must enter into Operational Balancing Agreements at all points of interconnection between its system and the system of another interstate or intrastate pipeline.

(ii) *Netting and trading of imbalances.* A pipeline must establish provisions permitting shippers and their agents to offset imbalances accruing on different contracts held by the shipper with the pipeline and to trade imbalances with other shippers where such imbalances have similar operational impact on the pipeline's system.

(iii) *Imbalance management.* A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances. A pipeline also must provide its shippers the opportunity to obtain similar imbalance management services from other providers and shall provide those shippers using other providers access to transportation and other pipeline services without undue discrimination or preference.

(iv) *Operational flow orders.* A pipeline must take all reasonable actions to minimize the issuance and adverse impacts of operational flow orders (OFOs) or other measures taken to respond to adverse operational events on its system. A pipeline must set forth in its tariff clear standards for when such measures will begin and end and must provide timely information that will enable shippers to minimize the adverse impacts of these measures.

(v) *Penalties.* A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service. Pipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff. A pipeline with penalty provisions in its tariff must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system.

(3) *Communication protocols.*

(i)(A) All electronic information provided and electronic transactions conducted by a pipeline must be provided on the public Internet. A pipeline must provide, upon request, private network connections using internet tools, internet directory services, and internet communication protocols and must provide these networks with non-discriminatory access to all electronic information. A pipeline may charge a reasonable fee to recover the costs of providing such an interconnection.

(B) A pipeline must implement this requirement no later than June 1, 2000.

(ii) A pipeline must comply with the following requirements for documents

constituting public information posted on the pipeline web site:

(A) The documents must be accessible to the public over the public Internet using commercially available web browsers, without imposition of a password or other access requirement;

(B) Users must be able to search an entire document online for selected words, and must be able to copy selected portions of the documents; and

(C) Documents on the web site should be directly downloadable without the need for users to first view the documents on the web site.

(iii) If a pipeline uses a numeric or other designation to represent information, an electronic cross-reference table between the numeric or other designation and the information represented must be available to users, at a cost not to exceed reasonable shipping and handling.

(iv) A pipeline must provide the same content for all information regardless of the electronic format in which it is provided.

(v) A pipeline must maintain, for a period of three years, all information displayed and transactions conducted electronically under this section and be able to recover and regenerate all such electronic information and documents. The pipeline must make this archived information available in electronic form for a reasonable fee.

(vi) A pipeline must post notices of operational flow orders, critical periods, and other critical notices on its Internet web site and must notify affected parties of such notices in either of the following ways to be chosen by the affected party: Internet E-Mail or direct notification to the party's Internet URL address.

[Order 587, 61 FR 39068, July 26, 1996, as amended by Order 587-B, 62 FR 5525, Feb. 6, 1997; Order 587-C, 62 FR 10690, Mar. 10, 1997; Order 587-G, 63 FR 20095, Apr. 23, 1998; Order 587-H, 63 FR 39514, July 23, 1998; Order 587-I, 63 FR 53576, Oct. 6, 1998; Order 587-K, 64 FR 17278, Apr. 9, 1999. Redesignated and amended by Order 637, 65 FR 10220, Feb. 25, 2000; Order 637-A, 65 FR 35765, June 5, 2000; Order 587-M, 65 FR 77290, Dec. 11, 2000; Order 587-N, 67 FR 11916, Mar. 18, 2002; Order 587-O, 67 FR 30794, May 8, 2002; Order No. 587-R, 68 FR 13819, Mar. 21, 2003; 69 FR 18803, Apr. 9, 2004; Order 587-S, 70 FR 28210, May 17, 2005]

### § 284.13 Reporting requirements for interstate pipelines.

An interstate pipeline that provides transportation service under subparts B or G of this part must comply with the following reporting requirements.

(a) *Cross references.* The pipeline must comply with the requirements in Part 358, Part 250, and Part 260 of this chapter, where applicable.

(b) *Reports on firm and interruptible services.* An interstate pipeline must post the following information on its Internet web site, and provide the information in downloadable file formats, in conformity with § 284.12 of this part, and must maintain access to that information for a period not less than 90 days from the date of posting.

(1) For pipeline firm service and for release transactions under § 284.8, the pipeline must post with respect to each contract, or revision of a contract for service, the following information no later than the first nomination under a transaction:

(i) The full legal name of the shipper, and identification number, of the shipper receiving service under the contract, and the full legal name, and identification number, of the releasing shipper if a capacity release is involved or an indication that the pipeline is the seller of transportation capacity;

(ii) The contract number for the shipper receiving service under the contract, and, in addition, for released transactions, the contract number of the releasing shipper's contract;

(iii) The rate charged under each contract;

(iv) The maximum rate, and for capacity release transactions not subject to a maximum rate, the maximum rate that would be applicable to a comparable sale of pipeline services;

(v) The duration of the contract;

(vi) The receipt and delivery points and zones or segments covered by the contract, including the industry common code for each point, zone, or segment;

(vii) The contract quantity or the volumetric quantity under a volumetric release;

(viii) Special terms and conditions applicable to a capacity release transaction, including all aspects in which

the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

(ix) Whether there is an affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper.

(2) For pipeline interruptible service, the pipeline must post on a daily basis no later than the first nomination for service under an interruptible agreement, the following information:

(i) The full legal name, and identification number, of the shipper receiving service;

(ii) The rate charged;

(iii) The maximum rate;

(iv) The receipt and delivery points covered between which the shipper is entitled to transport gas at the rate charged, including the industry common code for each point, zone, or segment;

(v) The quantity of gas the shipper is entitled to transport;

(vi) Special details pertaining to the agreement, including conditions applicable to a discounted transportation contract and all aspects in which the agreement deviates from the pipeline's tariff.

(vii) Whether the shipper is affiliated with the pipeline.

(c) *Index of customers.* (1) On the first business day of each calendar quarter, an interstate pipeline must file with the Commission an index of all its firm transportation and storage customers under contract as of the first day of the calendar quarter that complies with the requirements set forth by the Commission. The Commission will establish the requirements and format for such filing. The index of customers must also be posted on the pipeline's Internet web, in accordance with standards adopted in § 284.12 of this part, and made available from the Internet web site in a downloadable format complying with the specifications established by the Commission. The information posted on the pipeline's Internet web site must be made available

until the next quarterly index is posted.

(2) For each shipper receiving firm transportation or storage service, the index must include the following information:

(i) The full legal name, and identification number, of the shipper;

(ii) The applicable rate schedule number under which the service is being provided;

(iii) The contract number;

(iv) The effective and expiration dates of the contract;

(v) For transportation service, the maximum daily contract quantity (specify unit of measurement), and for storage service, the maximum storage quantity (specify unit of measurement);

(vi) The receipt and delivery points and the zones or segments covered by the contract in which the capacity is held, including the industry common code for each point, zone, or segment;

(vii) An indication as to whether the contract includes negotiated rates;

(viii) The name of any agent or asset manager managing a shipper's transportation service; and

(ix) Any affiliate relationship between the pipeline and a shipper or between the pipeline and a shipper's asset manager or agent.

(3) The requirements of this section do not apply to contracts which relate solely to the release of capacity under § 284.8, unless the release is permanent.

(4) Pipelines that are not required to comply with the index of customers posting and filing requirements of this section must comply with the index of customer requirements applicable to transportation and sales under Part 157 as set forth under § 154.111(b) and (c) of this chapter.

(5) The requirements for the electronic index can be obtained from the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426.

(d) *Available capacity.* (1) An interstate pipeline must provide on its Internet web site and in downloadable file formats, in conformity with § 284.12 of this part, equal and timely access to information relevant to the availability of all transportation services

whenever capacity is scheduled, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system, the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.

(2) An interstate pipeline must make an annual filing by March 1 of each year showing the estimated peak day capacity of the pipeline's system, and the estimated storage capacity and maximum daily delivery capability of storage facilities under reasonably representative operating assumptions and the respective assignments of that capacity to the various firm services provided by the pipeline.

(e) *Semi-annual storage report.* Within 30 days of the end of each complete storage injection and withdrawal season, the interstate pipeline must file with the Commission a report of storage activity. The report must be signed under oath by a senior official, consist of an original and five conformed copies, and contain a summary of storage injection and withdrawal activities to include the following:

(1) The identity of each customer injecting gas into storage and/or withdrawing gas from storage, identifying any affiliation with the interstate pipeline;

(2) The rate schedule under which the storage injection or withdrawal service was performed;

(3) The maximum storage quantity and maximum daily withdrawal quantity applicable to each storage customer;

(4) For each storage customer, the volume of gas (in dekatherms) injected into and/or withdrawn from storage during the period; and (5) The unit charge and total revenues received during the injection/withdrawal period from each storage customer, noting the extent of any discounts permitted during the period.

(f) *Notice of bypass.* An interstate pipeline that provides transportation (except storage) to a customer that is

located in the service area of a local distribution company and will not be delivering the customer's gas to that local distribution company, must file with the Commission, within thirty days after commencing such transportation, a statement that the interstate pipeline has notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to commencement.

[Order 637, 65 FR 10221, Feb. 25, 2000, as amended by Order 637-A, 65 FR 35765, June 5, 2000; Order 2004, 68 FR 69157, Dec. 11, 2003]

#### § 284.14 [Reserved]

### Subpart B—Certain Transportation by Interstate Pipelines

#### § 284.101 Applicability.

This subpart implements section 311(a)(1) of the NGPA and applies to the transportation of natural gas by any interstate pipeline on behalf of:

- (a) Any intrastate pipeline; or
- (b) Any local distribution company.

#### § 284.102 Transportation by interstate pipelines.

(a) Subject to paragraphs (d) and (e) of this section, other provisions of this subpart, and the conditions of subpart A of this part, any interstate pipeline is authorized without prior Commission approval, to transport natural gas on behalf of:

- (1) Any intrastate pipeline; or
- (2) Any local distribution company.

(b) Any rates charged for transportation under this subpart may not exceed the just and reasonable rates established under subpart A of this part.

(c) An interstate pipeline that engages in transportation arrangements under this subpart must file reports in accordance with § 284.13 and § 284.106 of this chapter.

(d) Transportation of natural gas is not on behalf of an intrastate pipeline or local distribution company or authorized under this section unless:

(1) The intrastate pipeline or local distribution company has physical custody of and transports the natural gas at some point; or

(2) The intrastate pipeline or local distribution company holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as an intrastate pipeline or its status and functions as a local distribution company; or

(3) The gas is delivered at some point to a customer that either is located in a local distribution company's service area or is physically able to receive direct deliveries of gas from an intrastate pipeline, and that local distribution company or intrastate pipeline certifies that it is on its behalf that the interstate pipeline is providing transportation service.

(e) An interstate pipeline must obtain from its shippers certifications including sufficient information to verify that their services qualify under this section. Prior to commencing transportation service described in paragraph (d)(3) of this section, an interstate pipeline must receive the certification required from a local distribution company or an intrastate pipeline pursuant to paragraph (d)(3) of this section.

[Order 436, 50 FR 42495, Oct. 18, 1985, as amended by Order 526, 55 FR 33011, Aug. 13, 1990; Order 537, 56 FR 50245, Oct. 4, 1991; Order 581, 60 FR 53072, Oct. 11, 1995; Order 637, 65 FR 10222, Feb. 25, 2000]

§§ 284.103–284.106 [Reserved]

### Subpart C—Certain Transportation by Intrastate Pipelines

#### § 284.121 Applicability.

This subpart implements section 311(a)(2) of the NGPA and applies to the transportation of natural gas by any intrastate pipeline on behalf of:

- (a) Any interstate pipeline, or
- (b) Any local distribution company served by any interstate pipeline.

#### § 284.122 Transportation by intrastate pipelines.

(a) Subject to paragraphs (d) and (e) of this section, other provisions of this subpart, and the applicable conditions of Subpart A of this part, any intrastate pipeline may, without prior Com-

mission approval, transport natural gas on behalf of:

- (1) Any interstate pipeline; or
- (2) Any local distribution company served by an interstate pipeline.

(b) No rate charged for transportation authorized under this subpart may exceed a fair and equitable rate under § 284.123.

(c) Any intrastate pipeline engaged in transportation arrangements authorized under this section must file reports as required by § 284.126.

(d) Transportation of natural gas is not on behalf of an interstate pipeline or local distribution company served by an interstate pipeline or authorized under this section unless:

(1) The interstate pipeline or local distribution company has physical custody of and transports the natural gas at some point; or

(2) The interstate pipeline or local distribution company holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the intrastate pipeline, for a purpose related to its status and functions as an interstate pipeline or its status and functions as a local distribution company.

[Order 436, 50 FR 42495, Oct. 18, 1985, as amended by Order 537, 56 FR 50245, Oct. 4, 1991; Order 537–A, 57 FR 46501, Oct. 9, 1992; Order 581, 60 FR 53073, Oct. 11, 1995]

#### § 284.123 Rates and charges.

(a) *General rule.* Rates and charges for transportation of natural gas authorized under § 284.122(a) shall be fair and equitable as determined in accordance with paragraph (b) of this section.

(b) *Election of rates.* (1) Subject to the conditions in §§ 284.7 and 284.9 of this chapter, an intrastate pipeline may elect to:

(i) Base its rates upon the methodology used:

(A) In designing rates to recover the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage service) included in one of its then effective firm sales rate schedules for city-gate service on file with the appropriate state regulatory agency; or

(B) In determining the allowance permitted by the appropriate state regulatory agency to be included in a natural gas distributor's rates for city-gate natural gas service; or

(ii) To use the rates contained in one of its then effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart.

(2)(i) If an intrastate pipeline does not choose to make any election under paragraph (b)(1) of this section, it shall apply for Commission approval, by order, of the proposed rates and charges by filing with the Commission the proposed rates and charges, and information showing the proposed rates and charges are fair and equitable. Each petition for approval filed under this paragraph must be accompanied by the fee set forth in § 381.403 or by a petition for waiver pursuant to § 384.106 of this chapter. Upon filing the petition for approval, the intrastate pipeline may commence the transportation service and charge and collect the proposed rate, subject to refund.

(ii) 150 days after the date on which the Commission received an application filed pursuant to paragraph (b)(2)(i) of this section, the rate proposed in the application will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service, unless within the 150 day period, the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data and arguments. In such proceeding, the Commission either will approve the rate or disapprove the rate and order refund, with interest, of any amount which has been determined to be in excess of those shown to be fair and equitable or in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(iii) A Commission order approving or disapproving a transportation rate under this paragraph supersedes a rate

determined in accordance with paragraph (b)(1) of this section.

(c) *Treatment of revenues.* The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation authorized under § 284.122(a) and computed in accordance with paragraph (b)(1) of this section have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation charges by the intrastate pipeline for service to intrastate customers.

(d) *Presumptions.* If the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1), the rate charged is presumed to be:

(1) Fair and equitable; and

(2) Not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(e) *Filing requirements.* Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a statement that describes how the pipeline will engage in these transportation arrangements, including operating conditions, such as, quality standards and financial viability of the shipper. The statement must also include the rate election made by the intrastate pipeline pursuant to paragraph (b) of this section. If the pipeline changes its operations or rate election under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations or the change in rate election.

[44 FR 52184, Sept. 7, 1979, as amended at 44 FR 66791, Nov. 21, 1979; Order 394, 49 FR 35364, Sept. 7, 1984; Order 436, 50 FR 42496, Oct. 18, 1985; 50 FR 52276, Dec. 23, 1985; Order 581, 60 FR 53073, Oct. 11, 1995]

#### § 284.124 Terms and conditions.

Contracts for the transportation of natural gas authorized under this subpart shall provide that the transportation arrangement is subject to the provisions of this subpart.

## § 284.125

## 18 CFR Ch. I (4–1–06 Edition)

### § 284.125 [Reserved]

### § 284.126 Reporting requirements.

(a) *Notice of bypass.* An intrastate pipeline that provides transportation (except storage) under § 284.122 to a customer that is located in the service area of a local distribution company and will not be delivering the customer's gas to that local distribution company, must file with the Commission within thirty days after commencing such transportation, a statement that the interstate pipeline has notified the local distribution and the local distribution company's appropriate state regulatory agency in writing of the proposed transportation prior to commencement.

(b) *Annual report.* Not later than March 31 of each year, each intrastate pipeline must file an annual report with the Commission and the appropriate state regulatory agency that contains, for each transportation service (except storage) provided during the preceding calendar year under § 284.122, the following information:

- (1) The name of the shipper receiving the transportation service;
- (2) The type of service performed (*i.e.*, firm or interruptible);
- (3) Total volumes transported for the shipper. If it is firm service, the report should separately state reservation and usage quantities; and
- (4) Total revenues received for the shipper. If it is firm service, the report should separately state reservation and usage revenues.

(c) *Semi-annual storage report.* Within 30 days of the end of each complete storage injection and withdrawal season, the intrastate pipeline shall file with the Commission a report of storage activity provided under the authority of § 284.122. The report must be signed under oath by a senior official, consist of an original and five conformed copies, and contain a summary of storage injection and withdrawal activities to include the following:

- (1) The identity of each customer injecting gas into storage and/or withdrawing gas from storage;
- (2) The docket where the storage injection or withdrawal rates were approved;

(3) The maximum storage quantity and maximum daily withdrawal quantity applicable to each storage customer;

(4) For each storage customer, the volume of gas (in dekatherms) injected into and/or withdrawn from storage during the period;

(5) The unit charge and total revenues received during the injection/withdrawal period from each storage customer; and

(6) The related docket numbers in which the intrastate pipeline reported storage related injection/withdrawal transportation services.

(d) *Notification of termination.* Not later than thirty days after the termination of any transportation arrangement (except storage) authorized under § 284.122, the intrastate pipeline must file with the Commission and with the appropriate state regulatory agency a statement, consisting of an original and five conformed copies to the Commission, including the following information:

- (1) The docket number assigned to the transaction and the date the transaction was terminated;
- (2) The total volumes transported under the arrangement;
- (3) The total revenues received; and
- (4) A statement certifying that the service was provided under the terms and conditions previously reported in that docket.

[Order 436, 50 FR 42496, Oct. 18, 1985, as amended at 50 FR 52276, Dec. 23, 1985; Order 636, 57 FR 13317, Apr. 16, 1992; Order 581, 60 FR 53073, Oct. 11, 1995]

### Subpart D—Certain Sales by Intrastate Pipelines

SOURCE: 44 FR 12409, Mar. 7, 1979, unless otherwise noted. Redesignated at 44 FR 52184, Sept. 7, 1979.

### § 284.141 Applicability.

This subpart implements section 311(b) of the NGPA and applies to certain sales of natural gas by intrastate pipelines to:

- (a) Interstate pipelines; and
- (b) Local distribution companies served by interstate pipelines.

**§ 284.142 Sales by intrastate pipelines.**

Any intrastate pipeline may, without prior Commission approval, sell natural gas to any interstate pipeline or any local distribution company served by an interstate pipeline. The rates charged by an intrastate pipeline pursuant to this subpart may not exceed the price for gas as negotiated in the contract, plus a fair and equitable transportation rate as determined in accordance with § 284.123.

[Order 581, 60 FR 53073, Oct. 11, 1995]

**§§ 284.143–284.148 [Reserved]****Subparts E–F [Reserved]****Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies****§ 284.221 General rule; transportation by interstate pipelines on behalf of others.**

(a) *Blanket certificate.* Any interstate pipeline may apply under this section for a single blanket certificate authorizing the transportation of natural gas on behalf of others in accordance with this subpart. A certificate of public convenience and necessity under this section is granted pursuant to section 7 of the Natural Gas Act.

(b) *Application procedure.* (1) An application for a blanket certificate under this section must be filed electronically. The format for the electronic application filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426, and must include:

- (i) The name of the interstate pipeline; and
- (ii) A statement by the interstate pipeline that it will comply with the conditions in paragraph (c) of this section.

(2) Upon receipt of an application under this section, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 of this chapter and, if required

by the public convenience and necessity, will issue to the interstate pipeline a blanket certificate authorizing such pipeline company to transport natural gas, as provided under this subpart.

(c) *General conditions.* Any blanket certificate under this subpart is subject to the conditions of subpart A of this part.

(d) *Pre-grant of abandonment.* (1) Except as provided in paragraph (d)(2) of this section, abandonment of transportation services is authorized pursuant to section 7(b) of the Natural Gas Act upon the expiration of the contractual term or upon termination of each individual transportation arrangement authorized under a certificate granted under this section.

(2) Paragraph (d)(1) of this section does not apply if the individual transportation arrangement is for firm transportation under a contract with a term of one year or more, and the firm shipper:

(i) Exercises any contractual right to continue such service; or

(ii) Gives notice that it wants to continue its transportation arrangement and will match the longest term and highest rate for its firm service, up to the applicable maximum rate under § 284.10, offered to the pipeline during the period established in the pipeline's tariff for receiving such offers by any other person desiring firm capacity, and executes a contract matching the terms of any such offer. To be eligible to exercise this right of first refusal, the firm shipper's contract must be for service for twelve consecutive months or more at the applicable maximum rate for that service, except that a contract for more than one year, for a service which is not available for 12 consecutive months, would be subject to the right of first refusal.

(e) *Availability of regular certificates.* This subpart does not preclude an interstate pipeline from applying for an individual certificate of public convenience and necessity for any particular transportation service.

(f) *Cross references.* (1) Any local distribution company served by an interstate pipeline may apply for a blanket certificate to perform certain services under § 284.224 of this chapter.

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(2) Any interstate pipeline may apply under subpart F of part 157 of this chapter for a blanket certificate to construct or acquire and operate certain natural gas facilities that are necessary to provide transportation under § 284.223.

(3) Section 157.208 of this chapter provides automatic authorization for the construction, acquisition, operation, replacement, and miscellaneous rearrangement of certain eligible facilities, as defined in § 157.202 of this chapter, subject to limits specified in § 157.208(d) of this chapter and § 284.11.

(4) Authorization for delivery points is subject to the automatic authorization under § 157.211(a)(1) and the prior notice procedures under § 157.211(a)(2) and § 157.205.

(g) *Flexible receipt point authority.* (1) An interstate pipeline authorized to transport gas under a certificate granted under this section may, at the request of the shipper and without prior notice:

(i) Reduce or discontinue receipts of natural gas at a particular receipt point from a supplier; and

(ii) Commence or increase receipts at a particular receipt point from that supplier or any other supplier.

(2) The total natural gas volumes received by the interstate pipeline following any such reassignment under this paragraph must not exceed the total volume of natural gas that the interstate pipeline may transport on behalf of the shipper under a certificate granted under this section.

(3) The receipt points to which natural gas volumes may be reassigned under this paragraph include eligible facilities under § 157.208 which are authorized to be constructed and operated pursuant to a certificate issued under subpart F of part 157 of this chapter.

(h) *Flexible delivery point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this section may at the request of the shipper and without prior notice:

(i) Reduce or discontinue deliveries of natural gas to a particular delivery point; and

(ii) Commence or increase deliveries at a particular delivery point.

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(2) The total natural gas volumes delivered by the interstate pipeline following any such reassignment must not exceed the total amount of natural gas that the interstate pipeline is authorized under a certificate issued pursuant to this section to transport on behalf of the shipper.

(3) The delivery points to which natural gas volumes may be reassigned under this paragraph include facilities authorized to be constructed and operated only under § 157.211 and the prior notice conditions of § 157.205 of this chapter.

[Order 436, 50 FR 42496, Oct. 18, 1985, as amended by Order 433-A, 51 FR 43607, Dec. 3, 1986; Order 636, 57 FR 13317, Apr. 16, 1992; Order 636-A, 57 FR 36217, Aug. 12, 1992; Order 581, 60 FR 53073, Oct. 11, 1995; Order 603, 64 FR 26610, May 14, 1999; Order 637, 65 FR 10222, Feb. 25, 2000; Order 637-A, 65 FR 35765, June 5, 2000]

## § 284.222 [Reserved]

### § 284.223 Transportation by interstate pipelines on behalf of shippers.

Subject to the provisions of this subpart and the conditions of Subpart A of this part, any interstate pipeline issued a certificate under § 284.221 is authorized, without prior notice to or approval by the Commission, to transport natural gas for any duration for any shipper for any end-use by that shipper or any other person.

[Order 436, 50 FR 42497, Oct. 18, 1985; 50 FR 45908, Nov. 5, 1985, as amended at 50 FR 52276, Dec. 23, 1985; Order 537, 56 FR 50245, Oct. 4, 1991; Order 581, 60 FR 53074, Oct. 11, 1995; Order 637, 65 FR 10222, Feb. 25, 2000]

### § 284.224 Certain transportation and sales by local distribution companies.

(a) *Applicability.* This section applies to local distribution companies served by interstate pipelines, including persons who are not subject to the jurisdiction of the Commission, by reason of section 1(c) of the Natural Gas Act.

(b) *Blanket certificate*—(1) Any local distribution company served by an interstate pipeline or any Hinshaw pipeline may apply for a blanket certificate under this section.

(2) Upon application for a certificate under this section, a hearing will be conducted under section 7(c) of the

Natural Gas Act, §157.11 of this chapter, and subpart H of part 385 of this chapter.

(3) The Commission will grant a blanket certificate to such local distribution company or Hinshaw pipeline under this section, if required by the present or future public convenience and necessity. Such certificate will authorize the local distribution company to engage in the sale or transportation of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent that and in the same manner that intrastate pipelines are authorized to engage in such activities by subparts C and D of this part, except as otherwise provided in paragraph (e)(2) of this section.

(c) *Application procedure.* Applications for blanket certificates must be accompanied by the fee prescribed in §381.207 of this chapter or a petition for waiver pursuant to §381.106 of this chapter, and shall state:

(1) The exact legal name of applicant; its principal place of business; whether an individual, partnership, corporation or otherwise; the state under the laws of which it is organized or authorized; the agency having jurisdiction over rates and tariffs; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed;

(2) The volumes of natural gas which:

(i) Were received during the most recent 12-month period by the applicant within or at the boundary of a state, and

(ii) Were exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act, if any;

(3) The total volume of natural gas received by the applicant from all sources during the same time period;

(4) Citation to all currently valid declarations of exemption issued by the Commission under section 1(c) of the Natural Gas Act if any;

(5) A statement that the applicant will comply with the conditions in paragraph (e) of this section;

(6) A form of notice suitable for publication in the FEDERAL REGISTER, as contemplated by §157.9 of this chapter,

which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose; and

(7) A statement of the methodology to be used in calculating rates for services to be rendered, setting forth any elections under §284.123 or paragraph (e)(2) of this section and a sample calculation employing the methodology using current data. If a rate election is made under paragraph (e)(2) of this section, this statement shall contain the following items (reflecting the 12-month period used to justify costs in the most recently approved rate case conducted by an appropriate state regulatory agency):

(i) Total operating revenues,

(ii) Purchase gas costs,

(iii) Distribution costs (which include that portion of the common costs allocated to the distribution function),

(iv) The volume throughput of the system categorized by sales, transportation and exchange service, and

(v) A study which determines transportation costs on a unit revenue basis in accordance with paragraph (e)(2) of this section, including any supporting work papers.

(d) *Effect of certificate.* (1) Any certificate granted under this section will authorize the certificate holder to engage in transactions of the type authorized by subparts C and D of this part.

(2) Acceptance of a certificate or conduct of an activity authorized thereunder will:

(i) Not impair the continued validity of any exclusion under section 1(c) of the Natural Gas Act which may be applicable to the certificate holder, and

(ii) Not subject the certificate holder to the Natural Gas Act jurisdiction to the Commission except to the extent necessary to enforce the terms and conditions of the certificate.

(e) *General conditions.* (1) Except as provided in paragraph (e)(2) of this section, any transaction authorized under a blanket certificate is subject to the same rates and charges, terms and conditions, and reporting requirements that apply to a transaction authorized for an intrastate pipeline under subparts C and D of this part.

(2) *Rate election.* If the certificate holder does not have any existing rates

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on file with the appropriate state regulatory agency for city-gate service, the certificate holder may make the rate election specified in §284.123(b)(1) only if:

(i) The certificate holder's existing rates are approved by an appropriate state regulatory agency,

(ii) The rates and charges for any transportation are computed by using the portion of the certificate holder weighted average annual unit revenue (per MMBtu) generated by existing rates which is attributable to the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage service), and

(iii) The Commission has approved the method for computing rates and charges specified in paragraph (e)(2)(ii) of this section.

(3) *Volumetric test.* The volumes of natural gas sold or assigned under the blanket certificate may not exceed the volumes obtained from sources other than interstate supplies.

(4) *Filings.* Any filings made with the Commission that report individual transactions shall reference the docket number of the proceeding in which the blanket certificate was granted.

(5) *Tariff filings.* The tariff filing requirements of part 154 of this chapter shall not apply to transactions authorized by the blanket certificate.

(f) *Pregrant of abandonment.* Abandonment of transportation services or sales, pursuant to section 7(b) of the Natural Gas Act, is authorized upon the expiration of the contractual term of each individual arrangement authorized by a blanket certificate under this section.

(g) *Hinshaw pipeline without blanket certificate.* A Hinshaw pipeline that does not obtain a blanket certificate under this section is not authorized to sell or transport natural gas as an intrastate pipeline under subparts C and D of this part.

(h) *Definitions.* For the purposes of this section:

(1) A *Hinshaw pipeline* means any person engaged in the transportation of natural gas which is not subject to the jurisdiction of the Commission under the Natural Gas Act solely by reason of section 1(c) of the Natural Gas Act.

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(2) *Interstate supplies* means any natural gas obtained, either directly or indirectly, from:

(i) The system supplies of an interstate pipeline, or

(ii) Natural gas reserves which were committed or dedicated to interstate commerce on November 8, 1978.

[45 FR 1875, Jan. 9, 1980, as amended by Order 319, 48 FR 34891, Aug. 1, 1983; 48 FR 35635, Aug. 5, 1983; Order 433, 50 FR 40346, Oct. 3, 1985, Redesignated and amended by Order 436, 50 FR 42497, 42498, Oct. 18, 1985; Order 478, 52 FR 28467, July 30, 1987; Order 581, 60 FR 53074, Oct. 11, 1995]

## §§ 284.225–284.226 [Reserved]

### § 284.227 Certain transportation by intrastate pipelines.

(a) *Blanket certificate.* A blanket certificate shall issue under this section to any intrastate pipeline that receives natural gas produced in adjacent Federal waters or onshore or offshore in an adjacent state, *provided that:*

(1) The gas must be received by the intrastate pipeline from a gatherer or other intrastate pipeline;

(2) The intrastate pipeline delivers the gas in the intrastate pipeline's state of operation to an end user or another intrastate pipeline; and

(3) The gas ultimately used by an end user in the same state.

(b) *Effective date.* If an intrastate pipeline is providing a transportation service described in paragraph (a) of this section as of February 1, 1992, and the service is not a qualifying service under §284.122 of subpart C of this part, a blanket certificate shall issue under paragraph (a) of this section and become effective as of February 1, 1992. If an intrastate pipeline is not providing a transportation service described in paragraph (a) of this section as of February 1, 1992 the blanket certificate shall issue and become effective on the date that the intrastate pipeline commences such a service that is not a qualifying service under §284.122 of subpart C of this part.

(c) *Acceptance of certificate.* An intrastate pipeline shall be deemed to have accepted a blanket certificate under this section if it continues after February 1, 1992, a service described in paragraph (a) of this section that is not a qualifying service under §284.122 of

subpart C or commences such a service after November 4, 1991.

(d) *Terms and conditions.* An intrastate pipeline's blanket certificate transportation authority under this section is subject to its compliance with all terms and conditions of subpart C of this part, except that service under this section does not have to be on behalf of an interstate pipeline or local distribution company served by an interstate pipeline.

(e) *Pregrant of abandonment.* Abandonment of transportation services, pursuant to section 7(b) of the Natural Gas Act, is authorized upon the expiration of the contractual term of each individual arrangement authorized by a blanket certificate under this section.

(f) *Effect of certificate.* Acceptance of a certificate issued under this section or conduct of activity authorized under this section will not subject the certificate holder to the Natural Gas Act jurisdiction of the Commission except to the extent necessary to enforce the terms and conditions of the certificate.

[Order 537, 56 FR 50246, Oct. 4, 1991, as amended by Order 544, 57 FR 46501, Oct. 9, 1992; Order 581, 60 FR 53074, Oct. 11, 1995]

### Subpart H [Reserved]

## Subpart I—Emergency Natural Gas Sale, Transportation, and Exchange Transactions

SOURCE: Order 449, 51 FR 9187, Mar. 18, 1986, unless otherwise noted.

### § 284.261 Purpose.

This subpart exempts a person who engages in an emergency natural gas transaction, as defined for purposes of this subpart, in interstate commerce from the certificate requirements of section 7 of the Natural Gas Act and from the conditions of § 284.10, except as provided in § 284.266, and §§ 284.7–284.9 and §§ 284.11–284.13 of subpart A of this chapter.

### § 284.262 Definitions.

For purposes of this subpart:

*Emergency* means:

(1) Any situation in which an actual or expected shortage of gas supply or capacity would require an interstate

pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any pipeline customer, including any situation in which additional supplies or capacity are necessary to ensure a pipeline's contracted level of service to any customer, but not including any situation in which additional supplies or capacity are needed to increase the contracted level of service to an existing customer or to provide service to a new customer; or

(2) A sudden unanticipated loss of natural gas supply or capacity; or

(3) An anticipated loss of natural gas supply or capacity due to a foreseeable facility outage resulting from a landslide or riverbed erosion or other natural forces beyond the participant's control. Participants may seek a temporary certificate under §§ 157.17 of this chapter if the facilities to remedy the emergency cannot be constructed automatically under § 2.55(b) or § 157.208(a) of this chapter.

(4) A situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.

Emergency does not mean any situation resulting from a failure by any person to transport natural gas under subpart B, C, or G of this part.

*Projected level of service* means the level of gas volumes to be delivered by the company for each customer and additional gas volumes needed by a customer due solely to a weather-induced increase in requirements.

*Emergency natural gas* means natural gas sold, transported, or exchanged in an emergency natural gas transaction.

*Emergency natural gas transaction* means the sale, transportation, or exchange of natural gas (including the construction and operation of necessary facilities) conducted pursuant to this subpart, that is:

(1) Necessary to alleviate an emergency; and

(2) Not anticipated to extend for more than 60 days in duration.

*Emergency facilities* means any facilities necessary to alleviate the emergency within the time frame established in § 284.264(b). Participants can seek permanent authority to operate the emergency facilities either under the temporary certificate provisions of § 157.17 of this chapter or the prior notice provisions of § 157.208(b) of this chapter.

*Participant* means any first seller, interstate pipeline, intrastate pipeline, local distribution company or Hinshaw pipeline that participates in an emergency natural gas transaction under this subpart.

*Recipient* means:

(1) In the case of a sale of emergency natural gas, the purchaser of such gas; or

(2) In the case of a transportation or exchange of natural gas when there is no sale of emergency natural gas under this subpart, the participant who receives the gas.

*Hinshaw pipeline* means a pipeline that is exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act.

[Order 603, 64 FR 26610, May 14, 1999]

**§ 284.263 Exemption from section 7 of Natural Gas Act and certain regulatory conditions.**

Any participant that engages in an emergency natural gas transaction conducted in accordance with this subpart is exempt from the requirements of section 7 of the Natural Gas Act and the conditions of § 284.10, except as provided in § 284.266, and from the requirements of §§ 284.7–284.9 and §§ 284.11–284.13 of subpart A of this part. Participation in any emergency natural gas transaction will not subject any participant to the jurisdiction of the Commission under section 7 of the Natural Gas Act except to the extent such transaction is provided for in this subpart.

**§ 284.264 Terms and conditions.**

(a) *General conditions.* (1) A participant must make every reasonable attempt to minimize use of emergency natural gas transactions.

(2) Before deliveries of emergency natural gas commence, a responsible official of the recipient must provide

any participants in the emergency natural gas transaction sufficient information to enable the participants to form a good faith belief that an emergency exists or is imminent.

(3) No participant may engage in an emergency natural gas transaction if its participation will adversely affect service to its existing customers.

(4) A participant may not sell emergency natural gas if, during the term of the sale, it is also purchasing emergency natural gas under this subpart, except when natural gas is being sold to relieve an emergency on another, separate segment of the participant's system.

(5) An interstate pipeline, acting in an emergency gas transaction as a broker or agent on behalf of another participant or any other person, may not receive compensation for such brokerage or agency service.

(6) A recipient of emergency natural gas that directly benefits from the service must:

(i) Provide line loss and the fuel volumes required to transport the emergency natural gas; and

(ii) Pay for the facilities required to be constructed to conduct the emergency natural gas transaction.

(b) *Duration*—(1) *Emergency sale or transportation.* An emergency natural gas transaction is limited to 60 consecutive calendar days, except that such transaction may be continued for an additional 60 consecutive days if:

(i) Fifteen days prior to the end of the initial 60-day period, the recipient of emergency natural gas files a petition that:

(A) Describes fully the continued emergency,

(B) Requests a waiver of the initial 60-day limitation and permission for an extension of the transaction for an additional 60 days; and

(ii) Within the 15-day period, the Commission does not, by order, prohibit continuation of the emergency natural gas transaction for the additional 60-day period.

(2) *Redelivery in emergency exchange.* The redelivery of emergency natural

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gas received under an exchange arrangement must occur within 180 consecutive days following the termination of deliveries of the emergency natural gas.

### § 284.265 Cost recovery by interstate pipeline.

(a) Except as provided in paragraph (b), an interstate pipeline that provides emergency natural gas, whether from its system supply or by special purchase, must directly assign the emergency gas costs to the recipient.

(b) If an interstate pipeline cannot identify individual recipients, the interstate pipeline must roll the emergency gas costs into its general system supply costs.

### § 284.266 Rates and charges for interstate pipelines.

(a) *Transportation rates*—(1) *Rate on file*. If an interstate pipeline has on file with the Commission an effective transportation rate schedule that conforms to § 284.10, it must use volumetric rates based upon fully-allocated costs and adjusted only for time and distance.

(2) *Rate not on file*. If an interstate pipeline does not have on file with the Commission a transportation rate schedule that conforms to § 284.10, it may:

(i) Base its rates upon the methodology used in designing rates to recover the transmission and related storage costs included in one of its then-effective sales rates schedules; or

(ii) Use the rates contained in one of its transportation rate schedules on file with the Commission which the interstate pipeline determines covers service comparable to transportation service authorized under this subpart.

(b) *Interstate pipeline costs excluded from rate base*. An interstate pipeline may not include in its jurisdictional rate base any cost associated with facilities installed and operated in connection with an emergency natural gas transaction unless a certificate of public convenience and necessity has been issued authorizing the costs. Absent a certificate, such facilities may only be used to conduct emergency natural gas

transactions or transactions authorized under section 311 of the NGPA.

[Order 449, 51 FR 9187, Mar. 18, 1986, as amended by Order 581, 60 FR 53074, Oct. 11, 1995]

### § 284.267 Intrastate pipeline emergency transportation rates.

*General rule*. Rates and charges for transportation of emergency gas by intrastate pipelines authorized under this subpart must be determined in accordance with § 284.123 of this chapter.

### § 284.268 Local distribution company emergency transportation rates.

(a) *Rate on file*. A local distribution company that has a rate on file with an appropriate state regulatory agency for city-gate transportation services must determine its rates and charges for transportation of emergency natural gas in accordance with § 284.123 of this chapter.

(b) *Rate not on file*. A local distribution company that does not have a rate on file with an appropriate state regulatory agency for city-gate transportation services must determine its rates and charges for transportation of emergency natural gas (per unit volume of emergency natural gas transported) in accordance with § 284.224(e)(2)(ii) of this chapter.

### § 284.269 Intrastate pipeline and local distribution company emergency sales rates.

An intrastate pipeline or local distribution company must determine its rates for sales of emergency natural gas under this subpart in accordance with § 284.142.

[Order 449, 51 FR 9187, Mar. 18, 1986, as amended by Order 581, 60 FR 53074, Oct. 11, 1995]

### § 284.270 Reporting requirements.

(a) *Forty-eight hour report for sales transactions*. Within 48 hours after deliveries of emergency natural gas commence, the purchasing participant must notify the Commission by telegraph or other written report of the sale, stating, in the following sequences:

(1) That the report is submitted pursuant to § 284.270 for an emergency natural gas transaction;

- (2) The date deliveries commenced;
- (3) The specific nature of the situation, explained in sufficient detail to demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;
- (4) The estimated total amount and average daily amount of emergency natural gas to be purchased during the term of the transaction;
- (5) The purchase price of the emergency natural gas;
- (6) The transportation rate; and
- (7) The identity of all participants involved in the transaction, including any customers to whom the emergency natural gas is to be assigned.

(b) *Forty-eight hour report for transportation (excluding exchanges).* Within 48 hours after deliveries commence in an emergency natural gas transaction which does not involve the sale of emergency natural gas, the recipient of emergency natural gas shall notify the Commission by telegram or other written report of the transportation, stating, in the following sequence:

- (1) That the report is submitted pursuant to § 284.270 for an emergency transaction;
- (2) The date deliveries commenced;
- (3) The specific nature of the situation, explained in sufficient detail to demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;
- (4) The estimated total amount and average daily amount of emergency natural gas to be transported during the term of the transaction;
- (5) The transportation rate; and
- (6) The identity of all the participants involved in the transaction.

(c) *Forty-eight hour report for exchanges.* Within 48 hours after an exchange transaction for emergency natural gas commences, the initial recipient of the exchange volumes must notify the Commission by telegram or other written report of the exchange, stating, in the following sequence:

- (1) That the report is for and submitted pursuant to § 284.270 for an emergency transaction;
- (2) The date the exchange commenced;

(3) The specific nature of the situation, explained in sufficient detail to clearly demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264, and anticipated duration of the emergency;

(4) The estimated total amount and average daily amount of emergency natural gas to be exchanged during the term of the transaction;

(5) The identity of all participants involved in the transaction;

(6) Whether the exchange is simultaneous or deferred, or any imbalances in the volumes;

(7) Whether the exchange is on a thermal or volumetric basis; and

(8) The rates or charges, if any, for the exchange service.

(d) *Termination report.* Within thirty days after the emergency natural gas transaction ends, the participant that received the emergency natural gas shall file with the Commission a sworn statement and two conformed copies thereof, which must include the following information in the following sequence:

(1) A description of the emergency natural gas transaction, including sufficient information to clearly demonstrate how the situation qualifies as an emergency under § 284.262 and under the conditions of § 284.264; the commencement and termination dates; the date of the 48-hour report, and the method of resolving the emergency;

(2) Any corrections to the 48-hour report information supplied to the Commission under paragraphs (a) through (c) of this section or a statement that the information was correct;

(3) The volumes of the emergency natural gas delivered during the transaction;

(4) The total compensation received by the seller for the emergency sale;

(5) The total compensation paid for the emergency natural gas transportation or exchange service, if any;

(6) The methods by which such compensation was derived;

(7) The total volumes of natural gas whose cost was assigned to specific customers, and the total volumes whose cost was included in system supply;

(8) The information supplied to any other participant pursuant to § 284.264(a)(2); and

(9) A statement that the emergency natural gas transaction was carried out in accordance with this subpart, and that identifies the circumstances demonstrating an emergency existed or was imminent so as to require an emergency natural gas transaction.

#### § 284.271 Waiver.

The Commission may, by order, waive the requirements of this subpart in connection with any emergency natural gas transaction to the extent required by the public interest.

### Subpart J—Blanket Certificates Authorizing Certain Natural Gas Sales by Interstate Pipelines

SOURCE: Order 636, 57 FR 13318, Apr. 16, 1992, unless otherwise noted.

#### § 284.281 Applicability.

This subpart applies to any interstate pipeline that offers transportation service under subpart B or G of this part.

#### § 284.282 Definitions.

(a) *Bundled sales service* is gas sales service that is not sold separately from transportation service.

(b) *Sales service* includes firm or interruptible gas sales.

(c) *Unbundled sales service* is gas sales service that is sold separately from transportation service.

(d) *Small customer* is a customer that purchases gas from a pipeline under the pipeline's one-part imputed load factor rate schedule on the effective date of the blanket certificate.

[Order 636, 57 FR 13318, Apr. 16, 1992, as amended by Order 636-A, 57 FR 36218, Aug. 12, 1992]

#### § 284.283 Point of unbundling.

A sales service is unbundled when gas is sold at a point before it enters a mainline system, at an entry point to a mainline system from a production area, or at an intersection with another pipeline system.

#### § 284.284 Blanket certificates for unbundled sales services.

(a) *Authorization.* An interstate pipeline that offers transportation service under subpart B or G of this part is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing it to provide unbundled firm or interruptible sales in accordance with the provisions of this section.

(b) *Conversion to unbundled firm sales service and firm transportation service.* On the effective date of the pipeline's blanket certificate for unbundled sales services under paragraph (a) of this section, firm sales entitlements under any firm sales service agreement for a bundled sales service are converted to an equivalent amount of unbundled firm sales service and an equivalent amount of unbundled firm transportation service.

(c) *Conversion to unbundled interruptible sales service and interruptible transportation service.* On the effective date of the pipeline's blanket certificate for unbundled sales services under paragraph (a) of this section, interruptible sales volumes under any interruptible sales service agreement for a bundled sales service are converted to an equivalent amount of unbundled sales service and an equivalent amount of unbundled interruptible transportation service.

(d) A pipeline that provides unbundled sales service under this section may serve as an agent of the sales customer to arrange for any pipeline-provided service necessary to deliver gas to the customer.

(e) *Small customer cost-based rate.* A pipeline that provided bundled sales service to a small customer before the effective date of the blanket certificate granted in paragraph (a) of this section is required to offer a sales service to that customer at a cost-based rate for one year from the effective date of the certificate. The obligation to sell at the cost-based rate expires one year after the effective date of the certificate.

[Order 636, 57 FR 13318, Apr. 16, 1992, as amended by Order 636-A, 57 FR 36218, Aug. 12, 1992; Order 581, 60 FR 53074, Oct. 11, 1995]

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### § 284.285 Pregrant of abandonment of unbundled sales services.

Abandonment of unbundled sales services is authorized pursuant to section 7(b) of the Natural Gas Act upon the expiration of the contractual term or upon termination of each individual sales arrangement authorized under § 284.284.

### § 284.286 Standards of conduct for unbundled sales service.

(a) To the maximum extent practicable, the pipeline must organize its unbundled sales and transportation operating employees so that they function independently of each other.

(b) The pipeline must conduct its business to conform to the requirements set forth in § 284.7(b)(2) and § 284.9(b)(2) with respect to the equality of service by not giving shippers of gas sold by the pipeline any preference over shippers of gas sold by any other merchant in matters relating to part 284 transportation.

(c) The pipeline must comply with part 358 by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(d) The pipeline must comply with § 250.16 of this chapter by considering its unbundled sales operating employees as an operational unit which is the functional equivalent of a marketing affiliate.

(e) A pipeline that provides unbundled sales service under § 284.284 must have tariff provisions on file with the Commission indicating how the pipeline is complying with the standards of this section.

[Order 636, 57 FR 13318, Apr. 16, 1992, as amended by Order 566, 59 FR 32899, June 27, 1994; Order 581, 60 FR 53074, Oct. 11, 1995; Order 2004, 68 FR 69157, Dec. 11, 2003]

### § 284.287 Implementation and effective date.

(a) Prior to offering any sales service under this subpart J, a pipeline must file revised tariff sheets incorporating the provisions of this subpart J.

(b) A blanket certificate issued under § 284.284 will be effective on the effective date (as approved by the Commis-

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sion) of the tariff sheets implementing service under that certificate.

[Order 581, 60 FR 53074, Oct. 11, 1995]

### § 284.288 Code of conduct for unbundled sales service.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03-3-000 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this regulation of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(b) A pipeline that provides unbundled natural gas sales service under § 284.284 shall retain, for a period of three years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

[Order 644, 68 FR 66336, Nov. 26, 2003, as amended by Order 673, 71 FR 9716, Feb. 27, 2006]

## Subpart K—Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others

SOURCE: Order 509, 53 FR 50938, Dec. 19, 1988, unless otherwise noted.

### § 284.301 Applicability.

This subpart implements section 5 of the Outer Continental Shelf Land Act (OCSLA) and applies to any jurisdictional interstate natural gas pipeline that holds a certificate under section 7

of the Natural Gas Act (NGA) authorizing the construction and operation of facilities on the Outer Continental Shelf (OCS).

#### § 284.302 Definitions.

For the purposes of this subpart, the term:

(a) *Outer Continental Shelf* (OCS) has the same meaning as found in section 2(a) of the OCSLA (43 U.S.C. 1331(a)); and

(b) *OCS pipeline* means an interstate natural gas pipeline that holds a certificate under section 7 of the NGA authorizing the construction and operation of facilities on the OCS, and includes all of the OCS pipeline's facilities that fall within the scope of the Commission's jurisdiction under section 7 of the NGA to the full extent that such facilities are used or necessary to transport natural gas on or across the OCS between:

(1) Any locations on the OCS (if the pipeline does not have an interconnection off the OCS), or

(2) The OCS and the first point of interconnection on the shoreward side of the OCS where the pipeline delivers or receives natural gas to or from either:

(i) A natural gas conditioning or processing facility, or

(ii) Another pipeline, or

(iii) A distributor or end user of natural gas.

[Order 509, 53 FR 50938, Dec. 19, 1988, as amended by Order 509-A, 54 FR 8313, Feb. 28, 1989]

#### § 284.303 OCS blanket certificates.

Every OCS pipeline [as that term is defined in § 284.302(b)] is required to provide open-access, nondiscriminatory transportation service pursuant to a blanket transportation certificate issued under subpart G of this part.

[Order 559, 58 FR 52663, Oct. 12, 1993]

### Subpart L—Certain Sales for Resale by Non-interstate Pipelines

#### § 284.401 Definitions.

*Affiliated marketer.* For purposes of this subpart, an "affiliated marketer" is a person engaged in the "marketing" of natural gas that is an "affiliate" of

an interstate pipeline as those terms are defined in § 161.2 of this chapter.

[Order 547, 57 FR 57959, Dec. 8, 1992]

#### § 284.402 Blanket marketing certificates.

(a) *Authorization.* Any person who is not an interstate pipeline is granted a blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the certificate holder to make sales for resale at negotiated rates in interstate commerce of any category of gas that is subject to the Commission's Natural Gas Act jurisdiction. A blanket certificate issued under Subpart L is a certificate of limited jurisdiction which will not subject the certificate holder to any other regulation under the Natural Gas Act jurisdiction of the Commission, other than that set forth in this Subpart L, by virtue of the transactions under this certificate.

(b) The authorization granted in paragraph (a) of this section will become effective on January 7, 1993 except as otherwise provided in paragraph (c) of this section.

(c)(1) The authorization granted in paragraph (a) of this section will become effective for an affiliated marketer with respect to transactions involving affiliated pipelines when an affiliated pipeline receives its blanket certificate pursuant to § 284.284.

(2) Should a marketer be affiliated with more than one pipeline, the authorization granted in paragraph (a) of this section will not be effective for transactions involving other affiliated interstate pipelines until such other pipelines' meet the criterion set forth in paragraph (c)(1) of this section. The authorization granted in paragraph (a) of this section is not extended to affiliates of persons who transport gas in interstate commerce and who do not have a tariff on file with the Commission under part 284 of this subchapter with respect to transactions involving that person.

(d) Abandonment of the sales service authorized in paragraph (a) of this section is authorized pursuant to section 7(b) of the Natural Gas Act upon the expiration of the contractual term or

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upon termination of each individual sales arrangement.

[Order 547, 57 FR 57959, Dec. 8, 1992, as amended by Order 581, 60 FR 53074, Oct. 11, 1995; Order 644, 68 FR 66337, Nov. 26, 2003]

### § 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the *Policy Statement on Natural Gas and Electric Price Indices*, issued by the Commission in Docket No. PL03-3-000 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this regulation of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

(b) A blanket marketing certificate holder shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the natural gas sold pursuant to its market based sales certificate or the prices it reported for use in price indices.

[Order 644, 68 FR 66337, Nov. 26, 2003, as amended by Order 673, 71 FR 9716, Feb. 27, 2006]

## PART 286—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

Sec.

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AUTHORITY: 5 U.S.C. 551 *et seq.*; 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7102-7352.

### § 286.101 Application for stay.

(a) *General rule.* Any person who believes that any provision of a final or interim regulation issued under the Natural Gas Policy Act of 1978 is unlawful as applied to such person may file an application for stay.

(b) *Content of application.* The application shall state, clearly and concisely:

(1) The provision of the regulation, by section, paragraph, subparagraph and clause, as appropriate, which applicant seeks to have stayed;

(2) The conditions which the applicant believes require the stay, including the irreparable injury which the applicant believes will result if the stay is not granted; and

(3) The factual and legal basis for applicant's contention that the final or interim regulation is unlawful.

(c) *Filing requirements.* The application shall be under oath. An original and three conformed copies shall be filed with the Secretary of the Commission.

(d) *Commission action.* The Commission may grant the application, in whole or in part, by issuing an order specifying the scope of the stay granted and the effective dates of the stay.

[43 FR 57599, Dec. 8, 1978, as amended at 44 FR 13473, Mar. 12, 1979]

### § 286.102 Application for rehearing.

(a) *General rule.* Any person aggrieved by any order or regulation or any amendment to a regulation issued under the NGPA and subject to judicial review under section 506(a) or (b) thereof shall file a petition for rehearing within 30 days after the order or regulation is issued by the Commission or February 3, 1979, whichever is later. There has not been an exhaustion of administrative remedies until a petition for rehearing has been filed under this section and the proceeding is complete by the denial of the request, or if

rehearing is granted, an order affirming, modifying or revoking the challenged order or regulation is issued.

(b) *Specifications of error.* The application for rehearing shall state clearly and concisely with respect to the challenged order or regulation:

(1) The provision of the order or the regulation, by section, and where appropriate, by paragraph;

(2) Applicant's interest in the particular provision; and

(3) The facts and legal analysis upon which the request for rehearing is based.

(c) *Procedural requirements.* Except as otherwise provided in this section, the procedures for rehearing in § 385.713 of this chapter shall apply.

(d) *Commission action upon the application.* (1) The Commission may grant the request for rehearing, in whole or in part, by issuing an order specifying the scope of rehearing. If, and to the extent that rehearing is granted, the Commission may request Staff, applicant or any other party to file briefs. In every case where rehearing is granted, the Commission will issue an order affirming, modifying or revoking the challenged order or regulation.

(2) The Commission may modify the original order or regulation without further hearing.

(3) Unless the Commission acts upon the application within 30 days after it is filed, such application shall be considered to have been denied. If the Commission grants rehearing in part, any part of the application outside the scope of the order granting rehearing shall be considered to have been denied.

[44 FR 2383, Jan. 11, 1979, as amended by Order 225, 47 FR 19058, May 3, 1982]

#### DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

SOURCE: Order 675, 71 FR 9707, Feb. 27, 2006, unless otherwise noted.

#### § 286.103 Notice to audited person.

An audit conducted by the Commission's staff under authority of the Natural Gas Policy Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has

not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

#### § 286.104 Response to notification.

Upon issuance of a Commission order that notes a finding or findings, with or without proposed remedies, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action; or challenge the finding or findings and any proposed remedies with which it disagreed by timely notifying the Commission in writing that it requests Commission review by means of a shortened procedure, or, if there are material facts in dispute which require

## **§ 286.105**

cross-examination, a trial-type hearing.

### **§ 286.105 Shortened procedure.**

If the audited person subject to a Commission order described in § 286.103 notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedies, or both, in any combination, by the shortened procedure, the Commission shall thereupon issue a notice setting a schedule for the filing of memoranda. The person electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. Subpart T of part 385 of this chapter shall apply to all filings. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion,

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the Commission may determine that some or all of the issues be litigated in a trial-type hearing.

### **§ 286.106 Form and style.**

Each copy of such memorandum must be complete in itself. All pertinent data should be set forth fully, and each memorandum should set out the facts and argument as prescribed for briefs in § 385.706 of this chapter.

### **§ 286.107 Verification.**

The facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses if hearing were had to testify as to the facts stated in the memorandum.

### **§ 286.108 Determination.**

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

### **§ 286.109 Assignment for oral hearing.**

Except when there are no material facts in dispute, when a person does not consent to the shortened procedure, the Commission will assign the proceeding for hearing as provided by subpart E of part 385 of this chapter. Notwithstanding a person's not giving consent to the shortened procedure, and instead seeking assignment for hearing as provided for by subpart E of part 385 of this chapter, the Commission will not assign the proceeding for a hearing when no material facts are in dispute. The Commission may also, in its discretion, at any stage in the proceeding, set the proceeding for hearing.